

# GENERAL TERMS AND CONDITIONS OF PURCHASE



## Clause 1 Scope of application, Form

- (1) The present General Terms and Conditions of Purchase (GCP) apply for all business relationships with our business partners and suppliers ("Seller"). The GCP only applies if the Seller is a company (Section 14 of the German Civil Code [BGB]), a legal entity of public law or a public-law special fund.
- (2) The GCP shall apply in particular to contracts concerning the sale and/or delivery of movable items ("goods"), irrespective of whether the Seller manufactures the goods or procures them from its suppliers (Subsections 433, 651 of the German Civil Code [BGB]). Unless otherwise agreed, the GCP shall apply in the version that is valid at the time KEB Automation KG ("Purchaser") places the order and, in any case, the version last supplied to the Seller in writing shall apply as the framework agreement for future orders of a similar nature, without any further reference required.
- (3) These GCP shall apply exclusively. Any General Terms and Conditions of Business of the Seller that deviate, contradict, or add to what is agreed herein shall only apply if expressly and separately agreed in writing. This continues to apply even if we accept deliveries from the Seller without reservation while being aware of said terms.
- (4) Individual agreements made with the Seller in a particular case (including collateral agreements, amendments and modifications) shall take priority over these GCP in any case. Subject to evidence to the contrary, a written contract or written confirmation on our part shall be authoritative for the content of such agreements.
- (5) Declarations of legal rights and declarations of the Seller in relation to the contract (e.g., deadline setting, reminder, withdrawal) must be submitted in writing, i.e., in written or text form (e.g., letter, email, or fax). Legally mandatory form regulations and further evidence in particular in case of doubts about the legitimacy of the declaring party remain unaffected.
- (6) Any references to the applicability of statutory provisions shall only serve for the purposes of clarification. Even without such clarification, the statutory provisions apply unless directly modified or expressly excluded within these GCP.

## Clause 2 Conclusion of contract

- (1) Our order is deemed to be binding when written agreement or confirmation is submitted at the earliest. The Seller must point out obvious errors to us (e.g., spelling and calculation errors) and incompleteness of the order including the order documents, for the purpose of correction or completion, prior to acceptance, otherwise the contract is not considered to be concluded.
- (2) The Seller shall confirm our order within a deadline of 14 (fourteen) working days in writing or in particular to execute our order without reservation by sending the goods (acceptance).

## Clause 3 Delivery time and delivery delay

- (1) The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and not otherwise agreed, it is three weeks from conclusion of contract. The Seller is obliged to inform us immediately in writing if he anticipates being unable to comply with agreed delivery times regardless of the reasons.
- (2) If the Seller does not provide its service or it is not within the agreed delivery period or is in default, our rights, especially with regard to withdrawal and claims to damages, are determined by statutory provisions. The regulations in Para. 3 remain unaffected.
- (3) If the Seller is in default, we shall be entitled – in addition to further legal claims – to demand lump-sum compensation for our default damages in the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the goods delivered late. We reserve the right to prove that greater damage has occurred. The Seller reserves the right to prove that no or only significantly less damage has occurred.

## Clause 4 Service, delivery, transfer of risk, delay of acceptance

- (1) The Seller is not entitled without prior written approval by us to have the service owed by him rendered by third parties (e.g., sub-contractors). The Seller bears the procurement risk for the goods or services we have ordered unless otherwise agreed (e.g., a limit to stock-on-hand).
- (2) Deliveries within Germany shall be carried out at no extra charge to the location we specify in the order. If the destination is not specified and otherwise agreed, then the delivery must be made to the Purchaser's place of business. The respective destination is also the place of fulfillment for the delivery and any supplementary performance (debt to be discharged at creditor's domicile).
- (3) The delivery must include a delivery note stating the date (issuance and shipping), content of the delivery (item number and amount) and our order identification (date and number). If the delivery note is missing or is incomplete, we shall not be held responsible for any resulting delays in processing and payment.
- (4) The risk of accidental loss and accidental deterioration of the item is transferred to us upon handover at the place of fulfillment. If an acceptance is agreed, this is decisive for the transfer of risk. In addition, the statutory provisions on contracts for work and services apply in the event of acceptance. Default of acceptance by us shall be equivalent to delivery or acceptance.
- (5) Statutory provisions apply to the start of our default of acceptance. However, the Seller must then expressly offer us its goods or services if a specific or identifiable calendar time is agreed for any activity or involvement on our part (such as the provision of material). If we are in default of acceptance, the Seller can demand replacement of his additional expenses according to the statutory provisions (Section 304 BGB). If the Contract concerns non-fungible goods that are to be produced by the Seller (custom production), the Seller shall only be entitled to further-reaching rights if we are obliged to provide assistance and are responsible for the failure to provide the assistance.

## Clause 5 Prices and payment terms

- (1) The price specified in the order is binding. All prices include the statutory value-added tax if not listed separately.
- (2) Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the Seller (e.g., assembly, installation) and all ancillary costs (e.g., proper packaging, transport costs, including any transport and liability insurance).
- (3) The agreed price is due within 30 (thirty) calendar days from complete delivery and service (including acceptance if agreed) as well as receipt of a proper invoice. If we make payment within 14 (fourteen) calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. If we pay by bank transfer, our payment shall be deemed timely if our transfer order is received by our bank before the payment deadline; we are not responsible for delays by the banks involved in the payment process.
- (4) We do not owe any interest payable after the due date. The statutory provisions shall apply to default in payment.
- (5) We reserve all statutory rights to offset and retain payment and to assert claims for an unfulfilled contract. In particular, we are entitled to withhold payments until the Seller has fulfilled our order in full and has remedied any defects.
- (6) The Seller has a right to offset and retain payment only on condition that counterclaims are established as final by a court of law, or undisputed.

## Clause 6 Rights of use

- (1) The Seller grants the Purchaser the non-exclusive, transferable, worldwide and perpetual right:
  - (a) To use, integrate into other products and distribute the supplies and services, including the associated documentation
  - (b) To install, commission, test and operate software and related documentation (collectively hereinafter referred to as "Software")
  - (c) To sub-license the right of use pursuant to letter (b) to affiliated companies within the meaning of Section 15 of the German Stock Corporation Law (AktG) to commissioned third parties, distributors and end customers
  - (d) To grant affiliated companies within the meaning of Section 15 of the German Stock Corporation Law (AktG) and other distributors the right to license end customers the right of use pursuant to letter (b)
  - (e) To use and copy the Software for integration into other products or to have it used or copied by affiliated companies within the meaning of Section 15 of the German Stock Corporation Law (AktG), third parties or other distributors
  - (f) To distribute, sell, rent, lease the Software, make it available for download or make it publicly available, for example, by way of Application Service Providing or other types of use, and to copy the Software to the extent necessary for this, provided that the number of licenses used at the same time does not exceed the number of licenses purchased
  - (g) To sub-license the right of use pursuant to letter (f) to affiliated companies within the meaning of Section 15 of the German Stock Corporation Law (AktG), commissioned third parties and distributors
  - (h) The Purchaser, affiliated companies within the meaning of Section 15 of the German Stock Corporation Law (AktG) and distributors are authorized to permit end customers to transfer the individual licenses, in addition to the right granted in Section 6 Paragraph 1.
- (2) All sub-licenses granted by the Purchaser shall provide reasonable protection for the Seller's intellectual property in the software using the same contractual terms as the Purchaser uses to protect its own intellectual property.
- (3) The Seller must inform the Purchaser in good time, at the latest with order confirmation, whether its deliveries contain open source components. This refers to software, hardware or other information that is provided to any user free of license fees with the right to edit or distribute it on the basis of a corresponding license (e.g., GPL, LGPL or MIT license). If the deliveries contain open source components, the Seller shall comply with all applicable open source license obligations and grant the Purchaser all rights and information necessary to comply with such license obligations. In particular, the Seller must deliver the following to the Purchaser immediately after confirmation of the order: (a) A document with a list of all open source components and their versions, all applicable license texts and copyright and author notes with appropriate structure and table of contents, and (b) the complete source text of the open source software used, including scripts and information on the generation environment if the applicable licenses require this.
- (4) The Seller shall inform the Purchaser in writing and in good time, at the latest upon order confirmation, if open source licenses used by the Purchaser are subject to a copyleft effect that may affect the Purchaser's products when used as intended. This is the case if license terms of the open source components used by the Seller require that products of the Purchaser or works derived from them may only be redistributed under the terms of the open source license terms, e.g., by disclosing the source code. If this is the case, the Purchaser is entitled to revoke the order within two weeks after receipt of the complete information.

## Clause 7 Confidentiality, provision of goods and retention of title

- (1) We reserve the rights of non-disclosure and retention of title for images, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents may only be used to provide the services ordered and returned to us once the contract has been fulfilled. The documents must not be disclosed to third parties, not even after the contract is completed. The confidentiality agreement does not expire until, and insofar as, the knowledge contained in the documents has become public knowledge.
- (2) These provisions also apply accordingly to substances and materials (e.g., software, finished and semi-finished products) as well as to tools, templates, samples, and other objects provided to the Seller for use in its manufacturing process. When not in active use, such objects must be kept safe separately at the Seller's expense and must be insured for the usual amount against destruction and loss.
- (3) Any processing, mixing or combination of objects we provide to the Seller is done on our behalf. The same applies to any further processing we undertake with the goods delivered by the Seller; we will be deemed their manufacturer and acquire ownership of the product in accordance with the statutory provisions at the latest upon further processing.
- (4) Ownership of the goods is transferred to us unconditionally and regardless of payment. However, if in specific cases we accept an offer from the Seller to transfer ownership that is conditional on the payment of the purchase price, the Seller's retention of title expires, at the latest, upon payment of the purchase price for the delivered goods. We remain authorized in the ordinary course of business to resell the goods under advance assignment of the resulting claim, also before the payment of the purchase price (alternatively application of the simple retention of title extended to the resale). This excludes all other forms of retention of title, in particular extended, transferred, or prolonged retention to include the further processing.
- (5) We retain ownership of tools. The Seller is obliged to use the tools exclusively for the manufacture of the goods ordered by us and to insure the tools at replacement value against fire, water and theft at his own expense. At the same time, the Seller hereby assigns to us all claims for compensation under this insurance policy. We hereby accept the assignment. The Seller is obliged to carry out any required maintenance and inspection work on our tools as well as all maintenance and repair work at its own expense. He must immediately notify us of any incidents. If he fails to do so culpably, our claims for damages remain unaffected.

## Clause 8 Defective delivery

- (1) Statutory provisions apply regarding our rights in the event of material defects and defects of title of the goods (including misdelivery and under-supply as well as improper assembly, inadequate installation, operating instructions and user manual) and in the event of other breaches of duty by the Seller unless specified otherwise below.
- (2) Pursuant to statutory provisions, the Seller is responsible in particular for ensuring that the goods have the agreed quality upon transfer of risk to us.. The respective product descriptions are deemed in any case to be an agreement on quality which – in particular due to identification or reference in our order – are the subject of the respective contract, or were incorporated in the contract in the same manner as these GCP. In this respect, it does not matter if the product description has been provided by us, by the Seller or by the manufacturer.
- (3) In deviation from Section 442 Para. 1 Sentence 2 BGB (German Civil Code) we shall be entitled to claims for damages without limitation also if we did not become aware of the defect upon conclusion of the contract due to gross negligence.

- (4) The statutory provisions (Subsections 377, 381 of the German Commercial Code [HGB]) apply to the commercial duty of inspection and notification of defects, with the following proviso: Our obligation to inspect shall be limited to defects which become apparent during our incoming goods inspection under external inspection including the delivery documents: i.e. exclusively limited to checking the ordered quality and ordered type, checking for any apparent damage resulting from transport or any other visible defect. If, during such inspection, the Purchaser notes any apparent damage or defect, he shall notify the Seller thereof without delay. If the Purchaser notes some damage or defect at a later date, he shall also report this without delay. In so far as he has complied with the above, the Purchaser shall have no further obligations towards the Seller concerning checking of the products at delivery and any notification resulting therefrom. If acceptance has been agreed, there is no inspection obligation.
- (5) Supplementary performance shall also include the removal of the defective goods and their re-installation, insofar as the goods have been installed in another item or attached to another item in accordance with their type and intended use, our statutory claim to reimbursement of corresponding expenses shall remain unaffected. Our liability for damages in the event of an unjustified demand to rectify defects shall remain unaffected; in this respect, however, we shall only be liable if we have knowingly or grossly negligently failed to recognize that no defect existed.
- (6) Irrespective of our legal rights and the regulations in para. 5, the following shall apply: If the Seller fails to meet his obligation of supplementary performance – at our discretion, by remedy of defects (rectification) or by shipping an item that is free of defects (replacement delivery) – within an appropriate period of time specified by us, then we can remedy the defect ourselves and can demand compensation from the Seller for the necessary expenses, or can demand an appropriate advance payment. If the Seller's supplementary performance has failed or is unreasonable for us (e.g., due to particular urgency, danger to operational safety or imminent disproportionate damage), no time limit is required; we shall inform the Seller immediately, if possible in advance of such circumstances.
- (7) Furthermore, we are entitled to reduce the purchase price or to withdraw from the contract in the event of a material defect or a defect of title in accordance with statutory provisions. In addition, we are entitled to statutory claims for damages and compensation of expenses.

## Clause 9 Supplier recourse

- (1) We are entitled without restriction to our statutory recourse claims against the supply chain (Subsection 445a, 445b, 478 of the German Civil Code [BGB]) in addition to other claims for defects. In particular, we are entitled to demand from our Seller exactly the same kind of subsequent fulfillment (remedy or replacement) that we owe our customers in individual cases. Our statutory right of choice (Section 439 para. 1 of the German Civil Code [BGB]) is not restricted by this.
- (2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Subsection 445a para. 1, 439 para. 2 and 3 of the German Civil Code [BGB]), we shall notify the Seller and request a written statement, briefly explaining the facts of the case. If a substantiated statement is not submitted within a reasonable period of time and no mutually agreed solution is reached, then the claim for defects actually granted by us shall be deemed to be owed to our customer. In such case, the Seller is responsible for submitting evidence to the contrary..
- (3) Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another company, e.g., by installation in another product.



## Clause 10 Producer liability

- (1) If the Seller is responsible for a product defect, he must indemnify us against claims by third parties insofar as the cause is located in his sphere of control and organization and he is himself liable in relation to third parties.
- (2) Within the scope of his obligation to indemnify, the Seller shall bear expenses in accordance with Subsection 683, 670 of the German Civil Code (BGB), which arise from or in connection with a claim of third parties, including recall actions carried out by us. We will inform the Seller about the content and scope of recall measures, as far as possible and reasonable, and give him the opportunity to comment. Further legal claims remain unaffected.
- (3) The Seller must conclude and maintain product liability insurance with a flat-rate cover sum of at least EUR 10 million per person/property damage.

## Clause 11 Product conformity, product-related environmental protection with substance declaration

- (1) If the Seller supplies products which are subject to legal and other statutory requirements with regard to their placing on the market and further marketing in the European Economic Area or corresponding requirements in other countries of use notified by the Purchaser, he shall ensure that the products comply with these requirements at the time of transfer of risk (cf. Clause 4 paragraph 4) . The Seller shall also ensure that all documents and information necessary to demonstrate the conformity of the Products with the applicable requirements are made available to the Purchaser immediately upon request.
- (2) If the Seller delivers products whose product components are subject to material restrictions and/or material information obligations (e.g., REACH, RoHS) at the time of the order, the Seller must declare these substances together with the required information at the latest at the time of the first delivery of the products. The above shall only apply to the extent that these are applicable at the Purchaser's place of business or at the place of destination specified by the Purchaser.
- (3) We have the expectation that the purchase of conflict minerals by the Sellers will be excluded under US American or EU law. Having said that, our suppliers (Sellers) should have appropriate management systems in place in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which are designed to achieve the above avoidance target along the entire supply chain. In particular, it is expected that the purchasing process will be set up, operated and monitored in accordance with the recommendations of the German Electrical and Electronic Manufacturers' Association (Zentralverband Elektrotechnik- und Elektronikindustrie e. V.).

## Clause 12 Provisions on export control and foreign trade data, reserve clause

- (1) The Seller shall fulfill all requirements of the applicable national and international customs and foreign trade law ("Foreign Trade Law"). The Seller must inform the Purchaser in writing of all information and data required by the Purchaser to comply with foreign trade law for export, import and re-export, in particular, no later than two weeks after the order is placed and immediately in the event of changes:
  - All applicable export list numbers including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN)
  - the statistical product number according to the current commodity classification of foreign trade statistics and the HS (Harmonized System) code, and
  - Country of origin (non-preferential origin) and, where required by the Purchaser, supplier's declarations of preferential origin (for European suppliers) or preference certificates (for non-European suppliers).

- (2) The contract fulfillment by the Purchaser is subject to the reservation that the fulfillment does not conflict with any obstacles due to national or international regulations of foreign trade law as well as no embargoes and/or other sanctions.

## **Clause 13 Limitation period**

- (1) The reciprocal claims of the contracting parties shall lapse in accordance with the statutory provisions unless otherwise specified below.
- (2) In deviation from Section 438 para. 1 no. 3 of the German Civil Code (BGB), the general limitation period for claims for defects is three years from transfer of risk. Insofar as acceptance has been agreed, the limitation period commences upon acceptance. The three-year limitation period applies accordingly to claims arising from legal defects, whereby the statutory limitation period for a third party (Section 438 (1) No. 1 of the German Civil Code [BGB]) remains unaffected by the statutory limitation period; beyond this, claims arising from legal defects are unlimited as long as the third party can assert such claims against us, in particular in the absence of a limitation period.
- (3) The limitation periods of the purchase law, including the above extension, apply – in the legal scope – for all contractual claims for defects. Insofar as we are entitled to non-contractual claims for damages due to a defect, the regular statutory statute of limitations (Subsection 195, 199 of the German Civil Code [BGB]) shall apply if not the application of the limitation periods of the sales of goods law in individual cases leads to a longer period of limitation.

## **Clause 14 Choice of law and jurisdiction**

- (1) The laws of the Federal Republic of Germany shall apply to these GCP and the contractual relationship between us and the Seller, with the exclusion of international uniform law, in particular the UN Sales Convention.
- (2) If the Seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special public fund, whether domestic or foreign, the exclusive jurisdiction for any disputes arising directly or indirectly under this contract shall be our headquarters in Barntrup. The same applies if the Seller is a company in the sense of Section 14 of the German Civil Code (BGB). However, in all cases we are also entitled to bring an action at the place of performance as defined in these GCP or in a prior individual agreement or at the Seller's general place of jurisdiction. Statutory provisions that have precedence, in particular regarding exclusive responsibilities, remain unaffected.