



## **KDG OPTICOMP GENERAL PURCHASING TERMS AND CONDITIONS**

### **1. Conclusion of the contract**

**1.a)** These General Purchasing Terms and Conditions form the sole basis for the contract between the supplier and ourselves. Any General Terms and Conditions of Business or other terms specified by the supplier which contain divergent provisions are hereby contradicted. By accepting an offer, confirming an order, or accepting or executing an order the supplier acknowledges these General Purchasing Terms and Conditions. Our Purchasing Terms and Conditions also apply to all future transactions with the supplier.

**1.b)** Orders, agreements and amendments are only binding if they have been issued or confirmed by us in writing. When submitting an offer, the supplier must adhere precisely to the terms of the principal's enquiry and explicitly point out any divergences.

**1.c)** Our order will be deemed to have been accepted unless the supplier declines the order, in writing, within one week of receiving it.

**1.d)** We must be notified in writing, before the order is accepted, of all technical changes in comparison with previous deliveries, offers or information given in catalogues. In the event of substantial technical changes affecting the intended use of the article ordered, we reserve the right not to conclude the contract or, if the supplier fails to notify us in good time, to withdraw from the contract.

**1.e)** The supplier must treat the conclusion of the contract as confidential. He may not cite us as a reference vis-à-vis third parties without our written consent.

### **2. Prices**

The prices agreed are fixed prices, to which VAT at the current statutory rate will be added, carriage paid to the agreed destination. All costs incurred by the supplier in connection with the provision of goods services are included. These include, in particular, packaging and transportation costs. Any price increases after the conclusion of the contract will be ineffective. kdg will meet only such costs as are explicitly specified in kdg's order as liabilities to be borne by kdg.

### **3. Over- / under-deliveries**

Unless specified otherwise in the contract, kdg will accept slight over-deliveries as contractual performance only if these are unavoidable for technical reasons, and do not exceed 5% of the total or part-delivery. This will not give rise to an entitlement to remuneration for the manufacturer. kdg will not be liable for excess goods delivered. Under-deliveries are, without exception, prohibited.

### **4. Commercial clauses**

The commercial clauses will be interpreted in accordance with INCOTERMS, in the version current on the date when the contract is concluded.

### **5. Certificates of origin, VAT certificates, export restrictions**

**5.a)** Certificates of origin requested by ourselves must be provided immediately by the supplier, giving all information required and duly signed. The same will apply to VAT certificates for deliveries abroad. The supplier will be obliged to compensate for any loss sustained owing to the declared origin not being recognised, due to defective certification or as a result of the authority concerned being unable to verify the origin of goods.

**5.b)** The supplier must notify us immediately if a delivery is subject, wholly or in part, to export restrictions under Austrian or other law or if restrictions exist on importation into Austria.

### **6. Involvement of third parties**

If the supplier intends to make use of third parties, sub-suppliers or subcontractors in order to perform the contract, it must notify us of this before concluding the contract. In the event that third parties are involved, we reserve the right not to conclude the contract or, if the supplier does not notify us in good time, to withdraw from the contract. The supplier will be liable for any third parties of which it makes use as for itself.



## **7. Provision of materials**

**7.a)** If we provide materials or parts for the purpose of the performance of the contract, the supplier must immediately inspect the materials or parts supplied and notify us of any defects. The obligation to notify applies by analogy if the supplier considers that repairs or alterations are necessary.

**7.b)** If the materials or parts supplied are not sufficient to enable the contract to be performed, the materials or parts not supplied must be procured exclusively from us; the supplier is not entitled to order them from third parties appointed by ourselves. The supplier may only carry out repairs or alterations with our written consent. Leftover materials and waste must be returned to us on request.

**7.c)** The materials supplied by us are intended solely for the execution of the order and will remain our property even after being processed.

## **8. Technical documentation**

**8.a)** Drawings and other documentation, devices, tools and other means of production made available to the supplier remain our property. If the supplier manufactures tools and other means of production on our instructions, this will result in our acquiring the original ownership of these.

**8.b)** The abovementioned articles may not be scrapped or made available to third parties - e.g. for manufacturing purposes - without our written consent. They may not be altered for purposes other than those contractually agreed - e.g. for delivery to third parties.

**8.c)** We reserve all rights to drawings or products produced to our instructions and to processes developed by ourselves.

**8.d)** Means of production and documentation belonging to the principal must be carefully stored, serviced, kept in good repair, replaced when worn out and insured against all forms of loss or damage by the supplier at the latter's expense.

**8.e)** For subsequent orders, the supplier is obliged to retain the materials provided to it for the purposes of manufacture, and auxiliary resources and tools produced by the supplier, in particular glass masters, stampers, films and print masters, for a period of at least 1 year. kdg must be informed before the abovementioned materials and auxiliary resources are destroyed; they may not be destroyed without kdg's written consent.

## **9. Delivery dates**

**9.a)** It is imperative that the delivery date indicated in the order, which in principle is the date on which the consignment is delivered to the place of delivery specified by ourselves, is adhered to. The delivery period will begin when the supplier receives the order letter. Agreed delivery dates are maturity dates, non-adherence to which will result in the supplier being in default without any reminder being issued. Unless expressly agreed otherwise, the supplier's contractual performance is a firm bargain within the meaning of § 376 of the Commercial Code. Unless specified otherwise, the corresponding provisions apply.

**9.b)** If the supplier becomes aware that the agreed delivery periods or dates cannot be adhered to for any reason, it must notify us immediately in writing. The supplier's liability in the event of late delivery remains unaffected. The supplier will be in default if the goods have not been received on the agreed date at the dispatch address specified by us.

**9.c)** In the event of default on the supplier's part we will be entitled, at our choice, to declare the option of subsequent delivery and compensation on grounds of late delivery or, without allowing any extension period for performance, to declare our withdrawal from the contract and demand compensation for loss incurred as a result of non-performance. In addition, in the event of delay in delivery, we will also be entitled to make a covering purchase at the supplier's expense. All resulting additional costs will be borne by the supplier. If we do not declare any of the above, the supplier will remain obliged to make delivery.

**9.d)** The contracting partner is aware that even short delays in delivery can result in lost production in our plants. Since we deliver to our customers on fixed dates, even small delays in delivery can give rise to substantial claims by our customers in respect of compensation and / or contractual penalties, which the supplier will ultimately be required to meet by way of recourse.

**9.e)** We may reject advance deliveries made without our written consent.

## **10. Dispatch, passing of risk**



**10.a)** Unless otherwise agreed, the articles ordered must be sent, in suitable packaging, by post, rail or road transport. Documentation required for customs purposes must be supplied at a sufficiently early stage to ensure rapid processing. Any additional costs, loss or damage caused by inadequate packaging or by failure to comply with our dispatch regulations will be borne by the supplier.

**10.b)** Two delivery slips must be enclosed with each consignment, quoting our order number and article description, the number of articles, gross and net weight and the order date. If the supplier does not provide the dispatch documents as prescribed, the goods will be stored at the supplier's expense and risk until they are received. kdg will not be liable for the resulting delays in processing.

**10.c)** Risk will be borne by the supplier until the articles ordered have been handed over at the agreed destination; this applies regardless of any provisions to the contrary in INCOTERMS.

**10.d)** The supplier is responsible for protecting the goods for transport purposes in such a way that they reach us undamaged. Regardless of fault, the supplier will be liable for damage sustained during transportation. The supplier will also be liable for loss or damage resulting from inadequate packaging.

**10.e)** The supplier is obliged to check all characteristics of relevance to quality and only offer us goods whose quality is assured.

## **11. Passing of title**

Title to the articles ordered will pass to us at handover. No reservation of title in favour of the supplier is permitted.

## **12. Invoices, payment**

**12.a)** Invoices must be submitted to us immediately after dispatch, separately and in duplicate, quoting kdg's order number and the order date. All invoices must show statutory VAT separately. Invoices not properly made out will be deemed not to have been issued.

**12.b)** Unless otherwise agreed, we will make payment at the end of the month following delivery and receipt of the invoice. The payment and discount periods will be determined by the date on which kdg receives the invoice. We will not be in default of payment until we have received a written reminder from the supplier; the arrears interest will be equivalent to the usual bank discount rate at the place of performance, up to a maximum of 5% p.a. We will only be obliged to make payment where the delivery is perfect and in accordance with the order. If the supplier is required to remedy defects or supply agreed documents after they were originally due, payment will not be made until the end of the month following that in which the defect was remedied or documents supplied.

**12.c)** Where advance deliveries are accepted, the due date for payment will be determined by the agreed delivery date.

**12.d)** Our payments do not signify an acknowledgement of the statement or of the satisfactory nature of the delivery or, consequently, any waiver of any guarantee or compensation claims.

**12.e)** We reserve the right to offset counterclaims of all kinds. The supplier's claims arising from this contract may only be assigned to third parties with our written consent.

## **13. Quality**

**13.a)** The delivery must conform to the agreed specifications and the relevant legislation, orders, directives and standards concerning technical safety, industrial safety and health protection, environmental protection and fire prevention.

**13.b)** The supplier must constantly ensure that the quality of its products delivered to us conform to the state of the art and advise us of the possibilities for improvement and technical modifications.

## **14. Defects in the delivery / Guarantee**

**14.a)** We will notify defects in the delivery as soon as possible following an inspection such as is feasible in the normal course of business; we will not accept any time-limit specified in this regard by the supplier. The contractor agrees not to raise an objection on the grounds of late notification of defects.

**14.b)** The guarantee period is 24 months from the date of delivery, unless agreed otherwise in the contract. Defects may be notified throughout the guarantee period. The guarantee period and period for the notification of defects will recommence when goods are repaired or replacement goods delivered.



**14.c)** Defects notified during the guarantee period, which include non-compliance with assured characteristics, must be remedied by the supplier, at our choice, either by means of repairs carried out without charge to us (including ancillary costs) or the delivery of replacement goods carriage paid to the agreed destination. Our supplier will be required to bear all costs incurred for the purpose of subsequent performance, in particular transportation, freight, infrastructure, labour and materials costs. After a period specified by ourselves for the remedying of defects or for re-delivery has expired without these being effected, we will also be entitled to withdraw from the contract or reduce the price. In addition, we reserve the right to claim compensation.

**14.d)** If the supplier fails to fulfil its obligations arising out of liability for defects within a reasonable period specified by ourselves, we may undertake the necessary measures ourselves, or have them carried out by third parties, at the supplier's expense and risk. We will then charge the costs necessarily incurred to the supplier.

**14.e)** We are entitled to pass on to the supplier any costs and consequential costs claimed from us by our customers arising from defects or the absence of assured characteristics in the goods ordered (consequential loss resulting from defects).

**14.f)** We will not accept any restriction on the supplier's statutory extra-contractual liability.

## **15. Product liability**

**15.a)** The supplier will indemnify kdg in full in respect of product liability claims which are due, even if only in part, to goods delivered by the supplier. The supplier will be required to bear all costs incurred and the cost of all measures to prevent loss or damage, such as recall costs, which become necessary in this connection.

**15.b)** If the supplier subsequently becomes aware of circumstances which could indicate the existence of a product defect within the meaning of the Product Liability Act, the supplier undertakes to notify kdg immediately.

## **16. Third-party rights**

The supplier guarantees that the supply and use of the articles ordered does not infringe the rights of third parties – such as patents, licences and other proprietary rights. If a claim is brought against us by a third party in respect of the infringement of rights in rem or other rights, e.g. industrial proprietary rights, the supplier will be required to compensate us for all losses resulting therefrom, including the costs of legal proceedings.

## **17. Contractual penalty**

If a contractual penalty is agreed in an individual contract and if, under the terms of the individual contract, the preconditions for the payment of the penalty are fulfilled, we will be entitled to demand the contractual penalty in addition to the performance of the contract; this will apply even if we accept the performance of the contract without reservation. The contractual penalty must be paid regardless of whether we have suffered any loss. Any claims for compensation for losses exceeding the amount of the contractual penalty will remain unaffected.

## **18. Obligation to preserve confidentiality**

All information or data from kdg or third parties which kdg uses in order to perform the contract and of which the supplier gains knowledge, directly or indirectly, constitutes kdg business secrets. The supplier is obliged to maintain the strictest confidentiality concerning data and other information of which it acquires knowledge. The supplier must also impose this obligation on its employees or agents in writing.

## **19. Liability**

Unless expressly specified otherwise in these General Purchasing Terms and Conditions, the supplier is liable for all fault or negligence on its own part and on that of its representatives, employees and other agents. This liability includes all direct and indirect personal injury and damage to property, and in particular lost profits.

## **20. Termination and withdrawal**

kdg is entitled, without prejudice to other rights of termination and withdrawal, to withdraw from the contract or terminate it if bankruptcy proceedings or court settlement proceedings are initiated concerning the supplier's assets or the supplier ceases payments other than temporarily.



### **21. Additional application of the statutory provisions**

In addition to the individual provisions of these General Purchasing Terms and Conditions, the statutory provisions apply. Any restriction on the supplier's statutory, contractual or extra-contractual liability must be explicitly agreed in writing.

### **22. Partial invalidity**

In the event that individual provisions of the contract are invalid, the remaining provisions will remain unaffected. The ineffective provisions must be replaced by an effective provision approximating as closely as possible to the economic intention of the ineffective provision.

### **23. Place of performance, place of jurisdiction, governing law**

**23.a)** The place of performance for deliveries is the agreed destination. The place of performance for payments is our registered office.

**23.b)** The place of jurisdiction is the locality of the court which has general jurisdiction over us. We reserve the right, however, also to bring suits against the supplier at the latter's general place of jurisdiction.

**23.c)** Austrian law alone applies. The application of UN commercial law is expressly excluded, even if the contractor's registered office is outside the territory of the Republic of Austria.

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