

## **GENERAL TERMS OF PURCHASE**

Peter Kölln GmbH & Co. KGaA, Elmshorn

### **§ 1**

#### **General Provisions**

- 1.1. Only these terms of purchase (hereinafter the “**Conditions**”) will apply in its latest version to all orders by Peter Kölln GmbH & Co. KGaA (referred to in this document using “we”, "us" or "our"). Differing or supplementing conditions of the supplier shall apply only if we consent to those conditions in writing, even if we do not expressly object to them.
- 1.2. These Conditions apply toward companies, public corporations, and special funds under public law.
- 1.3. These Conditions also apply to future transactions concluded with the supplier under ongoing business relationship, or to equivalent contracts in the future, even if we do not refer to them again in each individual case.
- 1.4. Legally relevant declarations and notifications the supplier may make towards us after contract conclusion (e. g., setting deadlines, warnings, or declarations of withdrawal) must be in writing to be effective (e. g., by letter, email or fax).

### **§ 2**

#### **Orders, offers and order confirmations**

- 2.1. Our orders are valid only if they are made in writing or the supplier confirms them in writing without undue delay after receiving the order. If the supplier fails to confirm our order in writing within 2 weeks (or within a commitment period we specify explicitly), we will no longer be bound by that order. Subsequent acceptance by the supplier will therefore be deemed a new offer and will require our acceptance.
- 2.2. Modifications and additions to these Conditions, as well as additional and side agreements require written form to be effective.
- 2.3. All our tender documents will remain our property, especially drawings, plans, calculations and technical specifications. They must not be disclosed to third parties without our prior consent. We remain the owner of industrial property rights and copyrights.
- 2.4. We may terminate the contract at any time through written declaration and indication of grounds if we can no longer use the ordered products in our business operations for reasons over which we have no control that arise after contract conclusion. In this case, we will remunerate the supplier for any partial service the supplier may have rendered

up to the termination, against proof; any further compensation shall be excluded. In case we terminate an agreement of works with the supplier, Sec. 649 of the German Civil Code shall be excluded.

### **§ 3 Delivery**

- 3.1 Deadlines and delivery periods are legally binding.
- 3.2 If delivery is made prematurely, we may refuse that service or send the goods back. If we do not send the goods back, we will store them on our premises at the supplier's risk and expense.
- 3.3 If it becomes recognizable that the supplier will not be able to comply with a performance deadline in part or in full, the supplier must let us know in writing without undue delay, specifying grounds and the anticipated duration of the delay. If this obligation is culpably breached, the supplier will be liable for damage compensation. This will not affect further claims.
- 3.4 If the supplier culpably fails to comply with a delivery deadline determined (or determinable) according to the calendar, that party will default without further warning or setting of a grace period. That default will be deemed to have occurred at the following times: if the delivery deadline was fixed on a calendar day, on expiry of that day; if it was fixed to occur during a certain calendar week, on expiry of the last business day of that week; if it was fixed to occur during a certain calendar month, on expiry of the last business day of that month.
- 3.5 If the supplier defaults on a delivery or service, we may charge a contractual penalty amounting to 0.15% per calendar day, up to a maximum of 5% of the value of the late delivery or service. Our right to withdraw from the contract or assert further claims (e.g., claims to damage compensation) remains unaffected. The supplier may present evidence to verify that no damage or damage in a lower amount has been caused by default.
- 3.6 We can declare the assertion of the contractual penalty until the final payment even if we accepted the delivery or service without reserving the right to claim for the penalty.
- 3.7 Unless otherwise expressly agreed for individual cases, the seller will bear the procurement risk for that party's services (e. g., limitation to inventory).
- 3.8 We may change the time or place of the delivery, or the type of packaging, at any time through written notification with a notice period of at least 15 calendar days before the agreed delivery date.

- 3.9 A delivery note indicating our order number, the department designation, number of pieces, exact description of the objects, and individual weight or measurements must be included with every delivery. We will not be responsible for delays in processing or payment resulting from a missing or incomplete delivery note. All raw materials and primary packaging materials must be given a batch identification. This must be indicated legibly on the delivery note. On the day of dispatch, the supplier shall send us a dispatch note. The order number must be indicated on all transport documents and the invoice.
- 3.10 Delivered food must be marketable and comply with all applicable statutes and ordinances of German and European food laws, especially Regulations (EC) 852/2004 and (EC) 396/2005 (directive on maximum permissible residues).

#### **§ 4**

##### **Dispatch guidelines; Dispatch notices**

- 4.1 Unless otherwise regulated, the supplier will take back empty containers and packaging at its own expense on our request unless we have explicitly agreed that we can be charged separately for packaging costs and hire fees for packaging.
- 4.2 The shipping documents must bear the business reference prescribed by the supplier. After shipping has occurred, a dispatch notice containing the exact description, quantity, weight (gross and net), type and packaging of the goods. The object must be sent to us in duplicate without undue delay.
- 4.3 If the demanded shipping documents for a delivery are not issued in a timely manner or if the above information is missing in the shipping documents or dispatch notices, for reasons for which the supplier is responsible, delays can result. If this occurs, we may store the goods on our premises until we receive the shipping documents and the complete information, at supplier's costs and risk.

#### **§ 5**

##### **Price; Risk assumption; Reservation of title**

- 5.1 Unless agreed otherwise in writing, the agreed price includes free delivery to the specified delivery address ('DDP' Incoterms 2010). For the avoidance of doubt, the agreed prices cover all ancillary costs (and packaging). The price indicated in the order is binding.
- 5.2 The supplier will bear the risk of accidental destruction or deterioration until the risk is transferred (through handover in the case of purchase contracts, or through acceptance if agreed or in the case of contracts for work and services, cf. item 6.2) at the agreed delivery location. This also applies if shipping has been agreed.

- 5.3 Supplier's reservations of title will apply only if they relate to our payment obligation for the respective products to which the supplier reserves ownership. In particular, expanded or extended reservations of title are not permitted.

## **§ 6**

### **Receiving, accepting and inspecting the goods**

- 6.1 Incidents of force majeure and other unforeseeable events over which we have no control (especially strikes, lockouts and natural catastrophes) entitle us to postpone acceptance of deliveries / services accordingly.
- 6.2 Either of the parties to a contract for work can require the work to be formally inspected once it is finished, for acceptance by us in line with the German Civil Code. The risk passes over to us upon acceptance. We will perform the acceptance test in a timely manner during the course of ordinary business, or after commissioning, if this is common standard for the delivered object, provided the works comply with the agreed specifications.
- 6.3 If excess deliveries are made beyond the commercially typical extent, we reserve the right to send back the excess goods at the supplier's expense.
- 6.4 For the merchant's obligation to inspect and give notice of defects, the statutory provisions (Secs. 377 and 381 of the German Commercial Code) will apply with the following provisos: our obligation to inspect is limited to defects that become apparent during our incoming goods inspection through external examination including the shipping documents (e. g., transport damage, incorrect or short delivery) or which are recognizable during quality control in a random sampling procedure. If acceptance has been agreed, there is no obligation to inspect. Otherwise, it depends on the extent to which an inspection or observation of the circumstances is feasible within the ordinary course of business. Our obligation to give notice of defects discovered later remains unaffected. Without prejudice to our obligation to inspect, our notice of defects will be deemed to have been given promptly and without due delay if it is sent within 8 business days from discovery or, for visible defects, from delivery.
- 6.5 By way of derogation from Sec. 442 para. 1 sentence 2 BGB, we are also entitled to unrestricted claims for defects if we remained unaware of the defect after contract conclusion due to gross negligence.

## **§ 7**

### **Payment**

- 7.1 Unless otherwise agreed, payment will be made at our discretion up to the 30th day with a 2% discount or within 60 days without deduction, calculated each time from the

receipt of the invoice and all the goods or the complete rendering of the service. Payment default at an earlier time is excluded. We will not owe any interest on maturity. The default interest is limited to 5 percentage points above the base interest rate under Sec. 247 BGB unless the supplier can prove that damages were greater. If a bank transfer is made, the payment will be deemed to have been made on time if our bank receives our transfer order before the payment period expires. We are not responsible for delays caused by the banks participating in the payment procedure.

- 7.2 The date of receipt at our address specified in our order letter will be considered the date of invoice receipt. However, payment periods will never begin before the agreed delivery period.
- 7.3 Neither down payments nor interim payments are considered as acknowledgment of conformity with the contract or as proper fulfillment of services by the supplier.
- 7.4 All invoices must be auditable. In particular, they must contain the supplier's name, postal address, email address and telephone number, and the name of the products and possibly their description, volumes or amounts, destination and order number and order date. They should correspond to the wording, textual sequence and prices of the order. All invoices shall include the required tax information, inter alia VAT number and performance period. Any excesses or shortfalls in performance must be listed separately on the invoice. Invoices must be sent to us in duplicate when the goods are shipped, however, invoices must be sent separately from the goods.
- 7.5 Unless otherwise agreed, no remuneration or compensation will be granted for the supplier's visits, offer preparation, cost estimates, projects, etc., regardless of whether an order is made and regardless whether these activities are done in an ongoing business relationship or for marketing purposes.
- 7.6 The invoices must be transmitted separately. We can process these only on time if they indicate the order number shown in our order, according to its specifications. We are not responsible for payment delays incurred by missing or false invoice data.
- 7.7 The agreed prices are net prices (without VAT). VAT must be shown separately on the invoices.

## **§ 8 Warranty**

- 8.1 The supplier will strictly comply with the statutory requirements of German and European food law, particularly the directive on maximum residues, when delivering food and food contact materials. We will not accept deviations from those requirements even if we are notified of them before or during delivery. The supplier will also comply with the acknowledged rules of technology, especially the specifications, standards and

guidelines regarding execution, accident prevention and environmental protection issued by the legislature, the supervisory authorities or the employers' liability insurance association. The standards and guidelines listed by us apply as amended.

- 8.2 We are entitled to the complete statutory warranty rights. We object to any limitation of the statutory warranty rights, including the ensuing claims to damage compensation.
- 8.3 Unless otherwise agreed, the statute of limitation for defect claims is 36 months after the risk is transferred (or, if acceptance is agreed, after the acceptance). If longer periods are stipulated by law (e.g., for construction), those periods will apply. For repaired or replaced parts, the statute of limitations shall start running again from the time the defect is remedied. The 36-month limitation period also applies to claims from defects of title, whereby the statutory limitation period for third-party claims for surrender in rem (Sec. 438 para. 1 no. 1 BGB) will remain unaffected. Claims from defects of title will not become time-barred in any case, as long as the third party can still assert the right against us, especially because it is not yet time-barred.
- 8.4 In urgent cases, especially if there is imminent danger or to avoid greater damages, we may also rectify defects ourselves, have them rectified, or procure a replacement, at the supplier's expense, even if no grace period has been granted to the supplier for subsequent performance or such a period has not yet expired. This also applies to purchase contracts. We will inform the supplier thereof without undue delay.
- 8.5 Rejected parts will remain in our disposal until they are replaced and will become the supplier's property through replacement.

## **§ 9**

### **Product liability**

- 9.1 The supplier will indemnify us and hold us harmless on first request against damage compensation claims asserted against us due to a defect in a product that supplier has delivered, insofar as the defect originated within the supplier's sphere of control and organization and the supplier is liable in relation to third parties. Within this framework, the supplier will also reimburse any expenses under Secs. 670 and 683 BGB which arise from or in relation to a recall action we have performed. If possible and feasible, we will inform the supplier about the content and scope of the recall actions to be performed and will give the supplier a chance to make a statement.
- 9.2 The supplier will take out product liability insurance at its own expense with an adequate coverage amount of at least EUR 5.0 million in a lump sum per incident of personal injury, financial damages and material damage, given that such insurance

coverage must cover the product recall risk and all damages in connection with a recall. The supplier will send us a copy of the insurance policy on request at any time.

## **§ 10**

### **Quality requirements, origins of the goods and minimum social standards**

- 10.1 The supplier ensures that the goods / services meet the agreed quality requirements.
- 10.2 Under the statutory provisions, the supplier will particularly ensure that the goods have the agreed specifications when the risk passes over to us. In any case, the product descriptions forming the subject matter of the respective contract (especially by being identified or referred to as such in our order), or which were included in the contract in the same manner as these Conditions, will be deemed an agreement on specifications. It makes no difference whether the product description comes from us, the supplier, or the manufacturer.
- 10.3 **The supplier ensures that the goods delivered by that party do not come from the People's Republic of China.** If this is the case, the supplier will refer to this fact without undue delay, and we will be entitled to terminate the supply contract.
- 10.4 The supplier ensures that the goods, regardless of the country of origin, were produced
- a) under humane conditions;
  - b) under non-employment of children;
  - c) in compliance with internationally recognized minimal social standards under payment of living wages under strict compliance with applicable minimum wages legislation; and
  - d) the supplier ensures that he meets tax and social insurance obligations in respect of his employees, which also applies for temporary employees.

The supplier will impose the obligations under Sec. 10.4 a) – d) above on its upstream suppliers. The supplier ensures that the principles above will be complied with through suitable periodic controls in the manufacturing company.

- 10.5 The supplier ensures that his upstream suppliers, if any, act in full compliance with the provisions of applicable minimum wages legislation. On demand, the supplier has to provide evidence to us at any time that the wages paid by the supplier and its sub-suppliers comply with the applicable minimum wages legislation. We are entitled to withhold an appropriate part of due payments until said evidence has been furnished to us. In case the supplier does not provide sufficient evidence within one month upon

demand we are entitled to withdraw from the contract with the supplier or to terminate it on good cause.

- 10.6 The supplier undertakes to hold us harmless on first written demand from third-party claims based on the non-payment or shortfall of minimum wages in respect of his employees and the employees of its sub-suppliers.
- 10.7 If goods are manufactured abroad or earmarked for delivery to a foreign country of which the supplier is aware, the supplier is obliged to comply with the laws which apply to such country and the laws of the country of final destination of the goods if such country deviates from the place of delivery.
- 10.8 If the goods to be delivered require a CE mark, the supplier will ensure those goods are labeled accordingly and will bear the costs incurred. If a CE Declaration of Conformity is required by law, that declaration must be handed over to us simultaneously with the delivery of the goods. The handover of that declaration is a condition of contractual fulfillment.
- 10.9 The characteristics of initial samples approved by us will be deemed a quality guarantee. Otherwise, our approval has no influence on the supplier's liability for defects, since the examination of the initial sample can refer only to the sample's basic suitability and visible condition, but not to the defect-free state of the serial products sent later.
- 10.10 The supplier will inform us in writing about the actual or suspected defects or construction flaws of delivered goods without undue delay.
- 10.11 If the discovery of a defect forces us to take special measures such as inspections or sorting, the supplier will reimburse the reasonable costs for such a procedure if that party is responsible for the defect.
- 10.12 We may change product specifications by unilateral declaration if we give at least 15 calendar days' notice before the agreed delivery date, provided the changes can be implemented within the limits of the supplier's normal production process without significant additional expense. In such a case, we will reimburse the supplier for any demonstrable and reasonable additional costs incurred by those changes. If changes cause delays in delivery which cannot be avoided in the supplier's normal production and business operations with reasonable efforts, the originally agreed delivery date will be postponed accordingly. The supplier will notify us in writing of the additional costs or delivery delays that party anticipates after making a careful estimation, promptly before the delivery date but at the latest within 5 business days after receiving our notification according to sentence 1 above.

## **§ 11**

### **Industrial property rights**

The supplier ensures that the delivery object or service is free from third-party rights in Germany and in the final destination country of the goods (provided the supplier has been informed that the final destination deviates from the agreed place of delivery). If third-party industrial property rights are breached, the supplier will compensate us for all damages incurred thereby, regardless of culpability. We may also obtain from the holder of such protective rights the required permit for delivery, commissioning, use, resale, etc., for the delivery object or service, at the supplier's reasonable expense, if the supplier is unable to remedy the defect of title within a reasonable period.

## **§ 12**

### **Termination on good cause**

Both parties are entitled to terminate the contract on good cause under the requirements of applicable law. Good cause shall be deemed to exist for us, in particular, when

- (a) the supplier or its sub-suppliers refuse access to their premises for the purposes of an audit;
- (b) the supplier is in breach of its obligation under Sec. 10.4 above;
- (c) the supplier violates duties under the minimum wages legislation; or
- (d) the supplier does not comply with social insurance duties, at home or abroad.

The statutory right of termination on good cause is not restricted under this Sec. 12. A termination under Sec. 12 a) – d) above shall not require a previous warning notice, i.e. a single violation is sufficient to give reason for an extraordinary termination.

## **§ 13**

### **Non-disclosure; Drawings**

- 12.1 The supplier will treat our order and all associated commercial and technical details as strictly confidential. Information we have provided, or drawings, etc. created by us or the supplier on the basis of such information, may be otherwise used or exploited only with our written permission.
- 12.2 Our acceptance or approval of drawings, plans or models presented by the supplier will not affect the supplier's sole responsibility for rendering the service properly.

## **§ 14**

### **Assignment; Prohibition of offsetting**

- 13.1 The supplier may not assign its claims under the contractual relationship to third parties. This does not apply where monetary claims are concerned (Sec. 354 a HGB).

- 13.2 The supplier may set off only those claims which are undisputed or determined by a final legal judgement. The same applies to rights of retention and rights to withhold services. We are entitled to our full rights of offsetting and rights to refuse performance.

## **§ 15**

### **Subcontractors**

- 14.1 Calling in subcontractors requires our prior written consent. Subcontractors must be named in the offer with complete business address and premises of the goods concerned. Information must be specified for the respective subcontractor's scope of delivery and service. The supplier will impose on the subcontractor all obligations the supplier has taken over from us regarding the tasks the subcontractor will take over from the supplier and will ensure compliance with those obligations. The supplier will guarantee the subcontractor's deliveries and services as though they were the supplier's own. The subcontractor will thus be deemed the supplier's vicarious agent.
- 14.2 The supplier may not prevent that party's subcontractors from concluding contracts with us for other deliveries or services.

## **§ 16**

### **Compliance**

If the goods were the object of a serious breach of antitrust law (such as arrangements regarding quotes or price, or allocation of territory or customers), in which the supplier was involved, lump-sum damage compensation will be charged in the amount of 10% of the net contract value of the goods in question. Proof of higher or lower damages remains reserved.

## **§ 17**

### **Place of fulfillment; Applicable law; Place of jurisdiction**

- 16.1 For deliveries and services, the place of fulfillment and for payments is the destination our registered office.
- 16.2 German law will apply to all claims arising from or relating to this contract, under exclusion of international conflict-of-law provisions, especially the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.3 If the supplier is a merchant, the sole place of jurisdiction for all disputes arising from or relating to this contractual relationship will be the competent court in our registered office. However, in all cases we may also sue at the place of fulfillment for the delivery obligation, or at the seller's general place of jurisdiction. Compulsory statutory provisions, especially regarding exclusive competence, remain unaffected and take priority.

16.4 Should individual clauses of these Conditions be invalid, this shall not affect the validity of the remaining clauses.

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