

**General Terms and Conditions of Business – Purchase
for Sales Contracts, Contracts for Work and Services
and Service Contracts of
Klaus Union GmbH & Co. KG**

I. Scope of validity

1. Service contracts and contracts for work and services with Klaus Union GmbH & Co. KG as the Purchaser in commercial legal relations shall be executed according to the terms and conditions below. By their respective inclusion the following GTC shall constitute an integral part of the service contracts and contracts for work and services with Klaus Union GmbH & Co. KG as Purchaser.
2. Any conflicting, deviating or supplementing General Terms and Conditions of the contracting party shall only constitute an integral part of the contract if the Contractor has expressly agreed in writing in the individual case. The Contractor agrees that in conflicting or doubtful cases the GTC of the Purchaser shall apply.
3. Regulations deviating from the provisions of these GTC shall require written agreement – the latter must expressly identify the modification to the GTC clause unless a deviating agreement of the contracting parties is expressly provided for in the individual GTC clause.

II. Orders and quotations

1. Every purchase order/assignment shall be confirmed in writing by the Contractor within two weeks. Any verbal subsidiary agreements must be recorded in writing.
2. If the basis of the transaction is impaired, if a substantial cause within the framework of a continuing obligation exists or if insolvency proceedings are filed against the assets of the Contractor and the Contractor has not yet or not completely fulfilled the contract, the Purchaser shall be entitled to withdraw from the contract or – in case of continuing obligations – to cancel the contractual relationship without observance of a period of notice.
3. Quotations by the Contractor shall be submitted free of charge; cost estimates shall be remunerated on the condition that this has been expressly agreed in writing in advance.
4. Any third-party costs shall be calculated in advance and finally confirmed in writing and shall require the written approval of the Purchaser.

III. Involvement of subcontractors

1. The involvement of subcontractors shall require the prior written consent of the Purchaser.
2. In any case it must be provably ensured by the Contractor that the subcontractor is aware of these Terms and Conditions and that he agrees to comply with them.

IV. Performance records and acceptance certificates

1. All mutually agreed performance records and the acceptance, too, shall be rendered free of charge for the Purchaser; the pertaining certificates shall be submitted to the Purchaser at the latest upon delivery of the performance.
2. All product information complete with manufacturing drawings etc. that are required for the operation, the further processing, the maintenance or repair of the object to be delivered, shall be provided by the Purchaser in time, unsolicited and without additional charge; art. 434 (2) of the German Civil Code (BGB) remains unaffected.
3. If those documents are missing, the invoice shall not be due until those documents are presented.

V. Product information

1. The Contractor is obliged to include in the delivery to the Purchaser all required product information, in particular concerning the composition, durability, processing instructions, safety information and marking regulations, assembly instructions, employment protection measures, directions for operation and use etc., including any modifications of same that had been made in good time before delivery.
2. The Contractor is obliged to scrutinise the order and – before accepting the order - to refer to any circumstances that might lead to additional costs or which cast the order specifications of the Purchaser into doubt – particularly against the background of the current state of the art and the experience of the Contractor.

VI. Dispatch

1. The dispatch shall comply with the applicable legal requirements and DIN standards, especially as regards potential customs regulations and dangerous goods regulations.

2. The risks of the dispatch shall be borne by the Contractor.
3. If subcontractors are commissioned, they shall indicate the Contractor as their principal in any correspondence and in the shipping documents where stating the order data.
4. If the loading unit exceeds the weight of 500 kg, the weight of the unit shall be indicated in a readily identifiable way on the loading unit.

VII. Order fulfilment and default

1. The order completion date indicated in the order shall be binding for the Contractor – the delivery deadlines provided by the Purchaser are fixed dates. If the Contractor is responsible for exceeding a delivery date, the Purchaser shall have the right to withdraw from the order and to claim damages for non-performance. In the event of a withdrawal, the work performed shall be remunerated upon invoicing. The results of the work performed shall be surrendered.
2. A failure to observe the delivery deadline, for which the Contractor is accountable, shall furthermore entail a contractual penalty of 0.25% of the total order value per workday in excess, limited at most, however, to 5% of the total order value.
A forfeited contractual penalty may be asserted till the day of maturity of the final payment without the need for having reserved this pursuant to § 341 (3) BGB. The forfeited contractual penalty shall not be set off against potential damage caused by delay pursuant to § 340 (2) BGB.
4. In no case shall the Contractor have a right of retention relating to materials and documents provided by the Purchaser. These shall be returned to the Purchaser immediately upon first request.
5. The Contractor shall only be entitled to invoke the absence of necessary materials and documents to be delivered by the Purchaser if he has not received them within an adequate period despite his written reminding request.
6. The place of performance is the loading platform at the Purchaser's place of business, unless agreed otherwise.

VIII. Invoice requirements

1. Invoices must be prepared in duplicate with the duplicate having to be clearly marked as such. The invoice shall include the order number and the materials.
2. Every invoice shall separately show the value-added tax, if the Contractor is lawfully entitled to charge it.
3. Every invoice shall include the invoice number and the tax number as well as the competent local tax office of the Contractor.
4. All third-party costs shall be evidenced and accounted for on the basis of copies of the original detailed invoice documents.
5. If one of the aforementioned invoice requirements remains unfulfilled, the invoice shall be deemed not payable till the complete invoice is submitted.

IX. Terms of payment

Unless stipulated otherwise, invoices shall be paid by the Purchaser within 45 days of delivery of the goods and submission of the invoice. The period allowed for payment commences with the delivery of the goods at the receiving place (consignee's address) and/or the acceptance of the works performance and receipt of the invoice at the invoice address indicated in the order/assignment. All payments effected by the Purchaser shall be made conditionally on the inspection of the goods and the verification of the invoice items.

X. Defects

1. A notification of defects shall in any case be deemed effected in good time if the letter of complaint has been served to the Contractor within a time limit of two weeks after delivery date, and for partial deliveries within two weeks after delivery of each partial shipment – this provision specifically defines the time limit for the present business relationship as it remains unspecified in § 377 of the German Commercial Code (HGB).
2. For hidden defects, it shall be sufficient to notify the Contractor of the defect within a time limit of 2 weeks after discovery of the defect. For the written notification a fax message will do; the recipient must have an appropriate receiving device in readiness.
The Contractor ensures in particular that his delivery/performance will come up to the Purchaser's requirements.
3. In the event of defective deliveries and performances the Purchaser is entitled to exert the statutory rights; in particular he may demand that the Contractor renders a retroactive performance free of charge.
4. The Contractor shall render a retroactive performance, chosen by the Purchaser, without delay and he shall reimburse the Purchaser, in addition to the damage caused by the delay, for all expenses that have arisen to the Purchaser as a result of the retroactive performance.

5. In urgent cases, in particular if the Purchaser himself is threatened to default because of the defect or if the Contractor is behind schedule with the retroactive performance, the Purchaser may immediately, at the expense of the Contractor, rectify the defect himself or have it rectified by a third party. The substitute performance may also be rendered in consideration of industrial property rights of the Contractor. A guarantee furnished by the Contractor for the remaining performance delivered shall not be affected by this substitute performance.

6. The Contractor shall avoid any liability for defects of title. If the Purchaser faces a claim from a third party relating to such defects, upon his first written request the Contractor shall be obliged to exonerate the Purchaser from all claims (including court and lawyer fees), which accordingly arise for the Purchaser.

7. Upon first request, the Contractor shall exonerate the Purchaser from any claims for compensation raised by third parties for defects in the product or defects of title, inasmuch as the Contractor is responsible for such claims.

8. The Contractor shall take out insurance coverage for the above-mentioned risks to the amount of at least EUR 2 million.

XI. Statute of limitation

1. The claims of the Purchaser in case of defects of quality and deficiencies in service performance shall become time-barred, unless longer time limits have been expressly provided by law or by contractual agreement, at the earliest two years after delivery or acceptance of the performance; claims relating to defects of title shall be time-barred after thirty years.

2. For goods or services subsequently delivered completely or partially new, replaced or repaired, the statutory period of limitation shall commence anew for the new parts.

XII. Insurance coverage on the part of the Contractor

1. The Contractor shall take out insurance against third-party liability claims covering at least EUR 2 million per damaging event and based on the prevailing customary conditions. The Contractor is obliged to furnish evidence of this coverage upon our request and without delay; smaller coverage amounts shall require an explicit written agreement.

XIII. Limitation of the Purchaser's liability

1. The bodies and legal representatives as well as the employees of the Purchaser shall be liable on whatever legal grounds only for gross negligence, intent or if the neglected duty is of essential importance for serving the purpose of the contract.

2. The liability of the Purchaser shall be restricted to contract-coherent foreseeable damage and limited to a maximum of EUR 100,000.00. It is understood that this limit shall not apply where the Purchaser has to assume a statutory compulsory liability in cases of injury to life, body or health or for damage to privately used things according to the product liability act or for other reasons.

XIV. Offsetting reservation

1. Receivables that the Purchaser and the companies associated to him by company law have acquired vis-à-vis the Contractor may be offset against receivables of the Purchaser vis-à-vis the Contractor and his successors; accordingly, the Purchaser is also entitled to exert rights of retention and defences.

2. In case of several receivables to be settled, the Purchaser is entitled to freely choose and determine the receivables to be offset.

XV. Copyrights and patent rights, planning documents, material

1. Drawings, designs, special tools, etc. that have been made by the Contractor on the basis of Purchaser's information or with his collaboration shall become property of the Purchaser without extra remuneration and shall be given to him on demand.

2. The Contractor shall exclusively allow the Purchaser the unrestricted and perpetual use of the order result, irrespective of the duration and scope of the cooperation. All assignable rights of use relating to copyrights and patent rights of the performances covered by this contract shall be vested in the Purchaser without any restriction.

3. Tools, drawings, samples and patterns, the Contractor's use of which has been permitted by the Purchaser, shall exclusively be used for the Purchaser's orders and will have to be returned immediately after completion of the order. The Contractor shall not use any of the designs and their preliminary drafts, which have been prepared for the Purchaser, for other clients – not even in modified form. There shall be no right of retention therein.

4. The supplier shall ensure that the use of performances rendered by him does not infringe third-party rights.

5. The supplier shall exonerate the Purchaser from any claims based on conflicting rights of third parties which are asserted against the Purchaser due to the contractually agreed utilisation of the performances rendered by the supplier.

6. Inasmuch as the supplier – after having obtained the Purchaser's consent – engages services and performances of third parties to perform his obligations, he will ensure that the exclusive rights of use are verifiably vested in him to the agreed extent.

7. The supplier waives any right to be named in or on the products of the Purchaser and he shall ensure that third parties who are engaged by him in the rendering of the performances also renounce a mention of their name in connection with the products. Here, it is possible that in an individual case an explicit other provision will be agreed.

XVI. List of references, advertising

The Contractor shall not be allowed to state the name of the Purchaser as a reference or use the business relationship for advertising purposes unless he has obtained the prior explicit written approval of the Purchaser.

XVII. Assignments

Assignments of the Contractor that are not subject to § 354 a) of the HGB are excluded; exceptional cases shall require the explicit written consent of the Purchaser in order to be valid.

XVIII. Secrecy

1. For a period of 6 years following the conclusion of contract, the Contractor undertakes to keep secret all information he has learnt about in connection with this contract and experience he has received from the Purchaser.

2. All documents that the Purchaser entrusts to the Contractor for the production of the object to be delivered as well as the designs, drafts, etc. prepared by the Contractor according to the Purchaser's specifications, must not be used by the Contractor for any other purposes or made accessible to third parties. If graphical designs or fair drawings of whatever kind are made, the Purchaser shall not be obliged to have the name or logo signature of the supplier or designer reproduced.

3. The Purchaser shall assume ownership, with all pertaining rights of use, of the Contractor's original copies and planning documents upon proper payment.

XIX. Contractual penalties

1. If the Contractor infringes an obligation defined in paragraphs III to VI, VIII and XVI, he shall pay, at the Purchaser's discretion, a penalty of up to 3% of the total order value to the Purchaser.

2. If the Contractor infringes an obligation defined in paragraphs X, XII, XV, XVIII, he shall pay, at the Purchaser's discretion, a penalty of up to 5 % of the total order value to the Purchaser.

3. The Contractor is entitled to have the appropriateness of the penalty level jurisdictionally reviewed.

4. For the avoidance of doubt, non-identical claims for compensation according to § 340 BGB as a matter of course may continue to be asserted in addition to the penalties; offsetting of the penalty shall not be considered possible unless the creditor interest is identical.

XX. Jurisdiction, applicable law

The place of jurisdiction for business dealings with merchants is Bochum, if the Purchaser desires, however, also the place of the Contractor's business. The contract shall be governed by the law applicable in the Federal Republic of Germany, without recourse to the provisions of the Hague Conventions Relating to a Uniform Law on the International Sale of Goods (EKG/EAG) and the Uniform United Nations Convention on Contracts for the International Sale of Goods (CISG).