

General Terms and Conditions KIRSCH GmbH
Issued 24. April 2009**1 Scope**

- 1.1 Our purchasing orders shall be subject to the following purchasing terms and conditions exclusively. We shall not recognize any changes or amendments to same, or any purchasing conditions by Supplier contrary to the purchasing terms and conditions hereafter, unless same have been confirmed as an amendment to our purchasing terms and conditions in writing, thereby agreeing to their applicability. Receipt of any shipments or services by Supplier or their unconditional payment shall not be construed as any approval of the sales terms and conditions by Supplier, even if same are definitely known to us.
- 1.2 Our Purchasing Terms and Conditions shall also be applicable to all future business transactions with said Supplier.

2 Orders

- 2.1 Any contracts, orders, signings and delivery requests, plus any changes or amendments to same shall be made in writing. Delivery requests may also be made by data telemetry or fax.
- 2.2 Verbal agreements after the contract signing, especially after-the-fact changes and amendments to our Purchasing Terms and Conditions - including this written form requirement - as well as any other ancillary agreements shall require a written confirmation in order to take effect.
- 2.3 Cost estimates shall be binding and shall not be compensated, unless otherwise agreed upon.
- 2.4 Supplier shall be obligated to accept our order within 8 days deadline, and we shall be authorized to cancel such order if such acceptance is not issues on time. Delivery requests shall be binding unless Supplier raises an objection within five business days after receipt of same.
- 2.5 Unless otherwise specified in the order requirements, all delivery items shall be delivered in customary commercial quality and - in case of industrial standards and/or regulations, such as equivalent standards, shall be delivered in compliance with the same and in compliance with agreed-upon test certificates.
- 2.6 In individual cases, order standards and drawings specified by us shall be binding, including tolerance specifications. Upon acceptance of the order, supplier shall acknowledge having obtained information on implementation type and scope of performance by studying the existing plans. We shall not be obligated in case of obvious errors, typos and math errors in the order itself or in the documents presented by us. Supplier shall be obligated to inform us of such errors so that our order may be corrected and restated. Same shall apply in case of missing documents or drawings.
- 2.7 The Quality Assurance Guidelines for Suppliers as well as the applicable delivery and packaging regulations of KIRSCH shall be an integral part of all our orders. In case the delivery, packaging regulations and the Quality Assurance Guidelines are not known, Supplier shall request said information from the respective buyer/purchaser.

3 Prices, Payment Terms

- 3.1 The price indicated in the order shall be binding. Unless otherwise agreed in writing, said price shall represent door-to-door delivery, customs fee paid (DDP pursuant to Incoterms 2000), including packaging and insurance but without sales tax, or delivery to the destination specified in the order. Otherwise, Supplier shall provide the merchandise at the time agreed upon with the freight forwarder for loading and shipping in a timely manner. In case we are invoiced for packaging based on a separate agreement in special cases, we shall be authorized to return said packaging to Supplier free of cargo charges and shall receive credit for 2/3 of the packaging value. Supplier shall be using environmentally friendly packaging materials only. In case the parties agreed on charges for packaging, said materials shall be invoiced at cost only.
- 3.2 Unless otherwise specified in writing, we shall pay the purchase price on the 25th day of the month after delivery took place, at 3% discount on the gross invoice amount, or in full within 90 days after receipt of the invoice, conditional upon Supplier forwarding to us all contract documents in complete and legible form (such as certificates, documentations, test reports, etc.). In case the merchandise is received after the invoice, said payment deadline shall be based on the receiving date of the merchandise. Payment shall be made subject to an audit of the invoice.
- 3.3 In case Supplier lowers his prices by the delivery date, such price reductions shall be applied in our favour.

4 Time of Delivery, Delivery Default

- 4.1 Delivery dates and deadlines specified in the order shall be binding. They commence as of the date of order. Compliance with delivery dates and deadlines shall be determined by receipt of the merchandise at our facility, or by the date of services performed. In case the delivery was not agreed upon as door-to-door delivery, customs fee paid (DDP pursuant to Incoterms 2000), Supplier shall provide the merchandise at the time agreed upon with the freight forwarder for loading and shipping in a timely manner.
- 4.2 In case Supplier has assumed installation or assembly, Supplier shall bear all ancillary costs required, such as travel expenses, provision of tools, and per diems.
- 4.3 Supplier shall be obligated to inform our ordering department immediately, in writing, whenever circumstances of any kind occur or become evident which indicate that the agreed-upon delivery date cannot be maintained.
- 4.4 Acts of God, labour unrest, forced operations disruptions, unrest, government actions and other unavoidable events shall authorize us - regardless of our other rights - to rescind from the contract, in full or parts thereof, if said events are of not insignificant duration.
- 4.5 We shall not be obligated to accept any delivery prior to its delivery date. In this case, we shall reserve the right to return the shipped goods at Supplier's expense. In case such early delivery is not returned, the shipped goods shall be stored at our facility until the agreed-upon delivery date, at Supplier's risk and expense. Payment will be made according to sec. 3.2, calculated from the agreed-upon delivery date.
- 4.6 In case delivery by Supplier is in default, we shall be authorized to demand a flat-rate default penalty in the amount of 0.5% of the order value per working day, not exceeding 5% of the order value. Additional statutory claims (especially for cancellation or damages due to non-compliance) shall be reserved.

- 4.7 The unconditional acceptance of the delayed shipment or service shall not be construed as any waiver of damage claims due to the delayed shipment or service; said claims shall remain in existence until payment in full for the remuneration owed by us for the respective delivery or service has been made.
- 4.8 Partial deliveries shall not be permitted in principle, unless expressly agreed to by us in writing, or as reasonable to us.
- 4.9 Unless otherwise proven, item numbers, weights and dimensions shall be those determined by us during the merchandise receiving check. We shall accept only those amounts and numbers of items ordered by us. Deliveries above or below such specifications shall be permitted only upon prior agreement with us in writing.
- 4.10 We shall be authorized to use any software as part of the product scope of delivery, including its documentation, to the permissible statutory extent (§§ 69 a. pp Copyright Code) with the agreed-upon performance specifications and to the extent required for the contractual application of the product. We shall be authorized to create a backup copy without any express agreement.
- 4.11 Supplier shall package the merchandise in suitable form.
- 4.12 We shall work under the assumption that Supplier, as the marketing agent of merchandise, has comprehensive knowledge of possible risks for his merchandise upon shipment, packaging, storage, etc. Prior to acceptance of an order, Supplier shall ascertain which of the merchandise ordered, or components thereof, must be classified as hazardous goods (such as paints, adhesives, chemicals or ignitable, oxidizing, combustible, flammable, poisonous, radioactive, corrosive, or self ignitable goods). In any such cases, Supplier shall inform us immediately.
- 4.13 All shipments need to include a bill of delivery or a packing slip, that should contain the following data: number of pieces, part name or description, purchase order number and the KIRSCH part number.
- 4.14 If individual items are shipped, each single item needs to be marked.

5 Transfer of Risk

Risk shall transfer to us at the time of acceptance by us or one of our representatives, at the location where delivery is to take place or services are to be rendered by contract. Sec. 4.5 remains unaffected.

6 Notice of Shipment and Invoice

Information provided in our orders and delivery requests shall apply. The invoice shall be forwarded as single copy to the imprinted address, stating the invoice number and other identification features. Said invoice shall not be included in the shipment.

For each single shipment of any purchase order, a notice of shipment needs to be sent via post, email or fax on the day of shipment.

7 Inspection for Defects, Warranty

- 7.1 We shall not be obligated to inspect the merchandise upon receipt. We shall attempt to inspect the merchandise for defects, especially accuracy, completeness and suitability by way of sampling during the proper course of business. Applicability of sec. 377 HGB [German Commercial Code] shall be excluded if permissible. Any complaint within 30 days after discovery of any fault or other deficiencies shall be deemed as being timely. Supplier shall waive any objection due to late deficiency claims.
- 7.2 Statutory warranty claims shall be available to us in full unless otherwise stipulated in the following. Regardless of said right, we shall be entitled to demand from Supplier our choice between remedy of defects or substitute delivery. Any expenditures incurred with said remedy of defects or substitute delivery shall be borne by Supplier. The right to damage claims shall be reserved.
- 7.3 The warranty period shall be 24 months or the applicable statutory minimum warranty period, starting with the transfer of risk, unless the merchandise has been used for a building, in compliance with its customary use, and has caused the defectiveness thereof.
- 7.4 In cases of deficiencies in title, Supplier shall indemnify us from any claims by third parties. Deficiencies in title shall be subject to a 10-year statute of limitation. We shall be authorized to initiate the permit for use of the respective delivery items and services from beneficiary using due diligence of a proper business, at Supplier's expense.
- 7.6 Supplier shall guarantee and ascertain that all shipments are not encumbered by any industrial property rights of third parties, and that delivery and use of the shipped goods do not violate any patents, licenses or other industrial property rights of third parties within Germany. Inasmuch as Supplier is aware that his products are marketed by KIRSCH in other countries as well, the above shall apply to said countries equally.
- 7.7 For any part of the shipment restored or repaired within the statute of limitation for defect claims, the statute of limitation shall re-commence at the time when Supplier has fully complied with our claims for post-fulfillment.
- 7.8 Supplier shall bear all costs incurred by us as a result of the defective shipment of the contract merchandise, especially costs for transportation, travel, labour, materials or incoming goods checks beyond the customary measure.
- 7.9 In case we take back any products manufactured and/or sold by us as a result of the deficiencies of contract merchandise provided by Supplier, or if our sales price was reduced because of said deficiencies, or other claims have been raised against us because of said deficiencies, we shall reserve the right to recourse against Supplier. Said recourse shall not be subject to any separate deadline.
- 7.10 We shall be entitled to demand reimbursement from Supplier of any expenditures incurred by us in our customer relation as a result of any claims for damage filed against us for purposes of post-fulfillment, especially costs for transportation, travel, labour, and materials.
- 7.11 Regardless of the regulations in sec. 7.3, the statute of limitation in cases of sec. 7.8 and 7.9 shall expire at the time when we have satisfied the claims filed against us by our customer, at the earliest, but five years after delivery by Supplier at the latest unless the applicable statutory minimum warranty period lasts longer.
- 7.12 In case a material defect is discovered within six months after transfer of risk, the assumption shall be that said defect did already exist at the time of

General Terms and Conditions KIRSCH GmbH
Issued 24. April 2009

transfer of risk unless said assumption is inconsistent with the type of merchandise or defect.

8 Product Liability, Release

In case we are subjected to any claims resulting from any violation of government safety rules or due to domestic or foreign product liability regulations or law due to product deficiencies traceable to Supplier's merchandise, we shall be entitled to demand compensation from Supplier inasmuch as these damages have been caused by products delivered by him. These damages also include the costs of a necessary recall action. Inasmuch as a defect occurs in a part delivered by Supplier, the assumption shall be that the defect has occurred within the realm of responsibility of Supplier exclusively.

9 Retention of Title, Provision

- 9.1** Inasmuch as we provide parts to Supplier, we shall retain title to such parts. Said parts shall be used for their intended purpose only. Any processing or reshaping by Supplier shall be performed on our behalf. In case of processing or admixture of our retained merchandise with other materials not in our possession, we shall acquire co-ownership in the new merchandise pro-rated by the value of our materials (purchase price plus VAT) relative to the value of the other processed materials at the time of processing.
- 9.2** In case the matter provided by us is inseparably interspersed with others not in our possession, we shall acquire co-ownership in the new matter prorated by the value of the retained matter (purchase price plus VAT) relative to the value of the other admixed materials at the time of admixture. In case the admixture takes place such that the matter of Supplier shall be regarded as the main component, the agreement shall be that Supplier assigns co-ownership to us and Supplier shall be the guardian of sole or co-ownership on our behalf.

10 Liability

We shall not be liable for any damages caused by us, our legal representatives or agents through simple negligence. This shall be applicable without regard of the legal aspects of the claim raised, especially due to default, other obligation violations or non-permitted actions. This liability restriction shall not be applicable to any damages resulting from injuries to life, body or health, as well as any violation of significant contract obligations. In case of any violation of non-significant contract obligations, we shall be liable for any material damages only inasmuch and in the amount customarily foreseeable upon its occurrence at the time of contract signing. Seller shall be liable for all damages caused by him, his legal representative or agent through negligence or intent.

11 Offsetting Charges

Our right to offsetting charges or enacting withholding rights shall not be restricted. Supplier shall be entitled to any offsetting charges through counter demands only and inasmuch as these are not disputed or have taken effect legally.

12 Documents and Confidentiality

- 12.1** Any business or technical information provided by us (including any features obtainable from forwarded items, documents or software) shall be kept strictly confidential toward third parties as long and inasmuch said information is proven to not be known publicly, and said information shall be provided at Supplier's plant only to those persons who necessarily must be consulted on the use of said information for purposes of delivery to us. Said persons shall be obligated to maintaining confidentiality as well. Said information shall remain our exclusive property. Without our prior written consent, such information or any products manufactured or characterized by such information, production means, brands, and appearance shall not be copied or utilized in any value-enhancing way, or subsequently supplied to any third parties, except for deliveries to us. Upon our request, all information originating from us (including any copies or recordings made, if any) and any loaned items shall be returned to us immediately, or shall be destroyed immediately. We shall reserve all rights to such information (including any copyrights and the right to file industrial property rights, such as patents, utility models, semi-conductor protection rights, etc.) Such legal reservation shall be applicable in favour of third parties in case such information has been provided by third parties.
- 12.2** Any products manufactured pursuant to documents designed by us, such as drawings, models, and alike, or which have been manufactured pursuant to confidential information designed by us, or manufactured with our tools or reverse engineering tools, shall not be used by Supplier himself, and shall not be forwarded or delivered to third parties by Supplier. The above shall equally apply to any printing orders.

13 Implementation of Work

- 13.1** All personnel implementing work in our plant facilities as part of contract fulfilment shall comply with all regulations of the applicable operations rules. Any liability for accidents incurred by such personnel in our plant facilities shall be excluded unless caused by intentional or grossly negligent violation of duty by our legal representatives or agents.
- 13.2** Any supplier rendering services or performances in our plant facilities as part of a contract with us shall ascertain that his legal representatives, agents and other employees are provided with sufficient insurance coverage against occupational accidents.

14 Place of Fulfilment, Jurisdiction

- 14.1** Unless otherwise specified in the contract, the place of fulfilment shall be the venue where the merchandise is to be delivered by contract.
- 14.2** Jurisdiction for any legal disputes arising directly or indirectly from contract relations with us shall be with the courts at our domicile in Trier, Germany. However, we shall also be entitled to the option of filing suit against Supplier at his domicile, at the site of his branch offices, or with the court at the place of fulfilment.

15 International Contracts

- 15.1** In case Supplier is domiciled outside of Germany, German law shall apply, excluding CISG (United Nations Convention on Contracts for the International Sale of Goods - CISG) and the Conflict of Laws Code. In individual cases, if we deviate from the above and do agree to the applicability of CISG (must be done in writing), the following special regulations shall apply to written form and Supplier's liability regarding contract violations:
- 15.2** Any contract changes or cancellations must be made in writing. This shall also apply to any agreement regarding a cancellation of the written form requirement.
- 15.3** In case of any culpable contract violation, Supplier shall also be liable for any damages not foreseeable at the time of contract signing.
- 15.4** In case of any delivery of non-contract compliant merchandise by Supplier, we shall be entitled to demand the delivery of a replacement shipment or cancel the contract if the contract violation represents a significant contract violation. Such significant contract violation shall exist, among others, if said merchandise is produced or marketed at Supplier only or if it is unreasonable to us for other reasons to obtain said merchandise from a third party or if the damages are difficult to assess, or not assessable at all, if an immaterial damage has been entered, if claims for damages are excluded due to Article 79 V of CISG, if trust in Supplier's reliability has been damaged on a sustained basis due to long-term debt situations, or if the contract violation regarding the merchandise has reached a level where the sale of merchandise is no longer feasible during regular and customer business activities.

16 Export Control, REACH

- 16.1** The supplier shall be obliged to inform us about any applicable export licence requirements for the merchandise under German, European or US export control law and customs regulation as well as the export control law and customs regulations of the country of origin of the merchandise in his offers, order confirmations and invoices and shall name a contact person in his organisation to provide further information upon request.
- 16.2** Supplier is obliged to take care of the European Regulation (EC) No 1907/2006. He guarantees, that the merchandise is registered with regard to the use of said merchandise (which is known to him) is registered properly in accordance with said Regulation. He will fulfil his obligation – e.g. preparation and issuance of a safety data sheet – without delay.

17 General Regulations

- 17.1** The German version of these General Terms and Conditions shall take precedence in any disputes.
- 17.2** In case of any disputes arising from this contract and contractual relations with us, German law shall apply while excluding Conflict of Laws Code and CISG.
- 17.3** In case any regulation of these Terms and Conditions or any other signed Agreements is found to be or become ineffective, the validity of the remaining regulations shall not be affected. The parties to this contract shall be obligated to replace the ineffective regulation by one which come closest in its economic intent to the ineffective one.