



# Terms and Conditions of Purchase of Sauter Feinmechanik GmbH

## **§ 1 Validity, form of legally relevant declarations, relationship to statutory provisions**

(1) All deliveries, services and offers of our suppliers shall be made exclusively on the basis of these Terms and Conditions of Purchase. They are an integral part of all contracts that we conclude with our suppliers for the deliveries or services (together "Services") offered by them, in particular for contracts for the sale and/or delivery of movable goods ("Goods") regardless of whether the supplier manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 BGB). They shall also apply to all future deliveries, Services of the supplier to us, even if they are not separately agreed again.

(2) The terms and conditions of our suppliers or third parties shall not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter that contains or refers to the terms and conditions of the supplier or a third party, this does not constitute an agreement to the validity of those terms and conditions.

(3) Legally relevant declarations and notifications regarding the contract (e.g., setting of deadlines, reminders, withdrawal) must be made in writing. Written form within the meaning of these Terms and Conditions of Purchase includes written and text form (e.g., letter, e-mail, fax). Statutory formal requirements and further proof, in particular in the event of doubts about the power of representation of the person making the declaration, remain unaffected.

(4) References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these Terms and Conditions of Purchase.

## **§ 2 Conclusion of contract, change requests, offers of the supplier, requirements for delivery documents and invoices of the supplier**

(1) We place our orders, change orders and delivery schedules in writing. In case of doubt, the content of oral agreements and agreements made by telephone (discussions) shall only be binding if confirmed by us in writing. If our offers do not expressly contain a binding period, we are bound for one week after the date of the offer. The receipt of the declaration of acceptance by us shall be decisive for timely acceptance. If we are entitled to order by delivery call-off, delivery call-offs become binding if the supplier does not object to them within seven working days of receipt.

(2) We are entitled to change the time and place of delivery as well as the type of packaging at any time by giving written notice of at least 14 calendar days before the agreed delivery date. The same applies to changes in product specifications, insofar as these can be implemented within the framework of the supplier's normal production process without significant additional expense, whereby in these cases the notification period in accordance with the previous sentence is at least one month. We will reimburse the supplier for any proven and reasonable additional costs incurred because of the change. If such changes result in delivery delays 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 must notify us of the additional costs and/or delays in delivery to be expected from him on careful assessment in good time before the delivery date, but at least within 10 working days after receipt of our written notification in accordance with the above sentences 1 or 2.

(3) Quotations and/or cost estimates provided to us by the supplier are binding and submitted free of charge.

(4) All order confirmations, delivery documents and invoices of the supplier must state our order number, the article number, delivery quantity and delivery address. Invoices must also comply with the statutory requirements.

### **§ 3 Prices, terms of delivery, terms of payment, invoice details, default in payment, rights of set-off, retention and assignment of the supplier**

(1) The price stated in the order is binding. If no prices are stated in the order, the supplier's list prices with the customary deductions apply. However, if the supplier reduces the prices for the ordered Goods before delivery, the reduced prices will apply. In principle, delivery shall be made Carriage and Insurance Paid (CIP (Incoterms 2020)) or from abroad Delivered Duty Paid (DDP (Incoterms 2020)) to the specified delivery address or - if not specified - to our registered office in Metzingen, Germany.

(2) In the absence of any agreement to the contrary, the price shall include delivery and transport to the place of delivery in accordance with the above paragraph 1, including packaging.

If the price does not include packaging according to the agreement made and the remuneration for the packaging - which is not only provided by way of lending - is not expressly determined, packaging is to be charged at the proven cost price. At our request, the supplier is obligated to take back the packaging at its own expense.

(3) Payment periods shall run from the stipulated delivery date, but in the event of delays by the supplier at the earliest from the date of receipt of the Goods and/or Services and proper invoicing in accordance with § 2 para. 4 of these Terms and Conditions of Purchase. If certificates and/or material inspection certificates are owed by supplier, the payment periods shall not commence before receipt of these documents. These documents form an essential part of the delivery, they are to be submitted with the stipulated delivery date and - in the absence of a delivery date - no later than five days after receipt of the Goods.

Invoices are due for payment 60 days net after the start of the payment period in accordance with the above provisions. If payment is made within 14 days of the start of the payment period, the supplier grants a 3% discount on the net amount of the invoice. The receipt of our transfer order at our bank will be sufficient for the timeliness of the payments owed by us.

(4) The settlement of an invoice is not to be deemed a waiver of notices of defects. In the event of a defective delivery, we are entitled to withhold payment on a pro rata basis until proper performance.

(5) In the event of default in payment ("Zahlungsverzug"), we will owe default interest at the rate of five percentage points above the base interest rate pursuant to § 247 BGB.

(6) Without prejudice to the provisions of § 320 BGB, the supplier shall only have offsetting and/or retention rights with counterclaims that have been adjudicated, are undisputed and/or arise from tortious acts committed intentionally by us.

(7) The supplier is not entitled - without prejudice to the provisions of § 354 a HGB - to assign its claims arising from the contractual relationship to third parties.

### **§ 4 Personal performance, delivery time, delay in delivery, transfer of risk**

(1) Without our prior written consent, the supplier is not entitled to have the performance owed by it rendered by third parties (e.g., subcontractors). He bears the procurement risk for his Services unless otherwise agreed in individual cases (e.g., limitation to stock).

(2) The agreed delivery time (delivery date or period) or - in the absence of an express agreement - the delivery time specified by us in the order or determined in accordance with § 2 para. 2 of these Terms and Conditions of Purchase shall be binding. Early deliveries are only permissible with our consent. The supplier is obligated to inform us immediately in writing if circumstances occur or become apparent according to which the delivery time cannot be met.

(3) If the day on which the delivery is to be made at the latest can be determined on the basis of the contract, the supplier shall be in default on expiry of this day without a reminder from us being required.

(4) In the event of a delay in delivery, we shall be entitled to the statutory claims without limitation, whereby we shall only be entitled to exercise a right of withdrawal and/or assert claims for damages in lieu of performance after the fruitless expiry of a reasonable grace period.

In addition, we are entitled to demand a contractual penalty from the supplier of 0.3 % of the respective order value for each working day of the delay in delivery, up to a maximum of 5 %. The contractual penalty will be set off against the default damages to be compensated by the supplier.

(5) The supplier is not entitled to make partial deliveries without our prior consent.

(6) Even if shipment has been agreed, the risk shall not pass to us until the Goods are handed over to us at the agreed destination or – if earlier – we are in default of acceptance.

## **§ 5 Securing Property**

(1) We reserve ownership, copyright and all rights to orders placed by us and/or drawings, illustrations, calculations, descriptions and/or other documents made available by us to the supplier. The supplier may neither make them accessible to third parties nor use and/or reproduce them himself and/or through third parties without our express consent. In addition, the confidentiality obligations pursuant to § 12 of these Terms and Conditions of Purchase apply.

(2) Tools and models which we make available to the supplier, or which are manufactured for contractual purposes, and which are separately invoiced to us by the supplier shall remain respectively become our property. The supplier will mark them as our property, store them carefully, protect them against damage of any kind to an appropriate extent and use them only for the purposes of the contract. In the absence of an agreement to the contrary, the contracting parties shall each bear half of the costs of their maintenance and repair. However, insofar as these costs are attributable to defects in the items manufactured by the supplier and/or to improper use and/or improper storage on the part of the supplier, its employees and/or other vicarious agents, they shall be borne solely by the supplier. The supplier shall notify us immediately of any damage to these tools and models that is not merely insignificant. He shall return them to us in proper condition upon request or if they are no longer permanently required by him for the performance of the contracts concluded with us.

(3) Any processing, mixing and/or combination (together further “processing”) by the supplier of items provided by us shall be carried out for us. The same applies in the event of further processing of the delivered Goods by us, so that we are the manufacturer and acquire ownership of the product at the latest with the further processing in accordance with the statutory provisions.

(4) Retentions of title by the supplier shall only apply insofar as they relate to our payment obligation for the respective Goods to which the supplier retains title. In particular, we reject the agreement of extended and/or prolonged reservation of title.

## **§ 6 Defective delivery**

(1) The statutory provisions and – as applicable – the following supplements and clarifications shall apply to our rights in the event of material defects and defects of title of the Goods (including wrong and short delivery as well as improper assembly/installation and/or defective instructions) and in the event of other breaches of duty by the supplier.

(2) In accordance with the statutory provisions, the supplier shall be liable in particular for ensuring that the Goods have the agreed quality when the risk passes to us. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or have been included in the contract in the same way as these Terms and Conditions of Purchase shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, from the supplier and/or from the manufacturer.

(3) In the case of Goods with digital elements and/or other digital content, the supplier shall owe the provision and updating of the digital content in any case to the extent that this results from a quality agreement in accordance with the above paragraph 2 and/or other product descriptions by the manufacturer and/or on its behalf, in particular on the Internet, in advertising and/or on the label of the Goods.

(4) We are not obligated to inspect the Goods and/or make special enquiries about any defects upon conclusion of the contract. Partially deviating from § 442 (1), 2. sentence BGB (German Civil Code), we are therefore also entitled to claims for defects without restriction if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(5) The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial duty to examine and give notice of defects, subject to the following proviso: Our duty to examine shall be limited to defects which become apparent during our incoming goods inspection by means of external examination including the delivery documents (e.g., transport damage, wrong delivery and short delivery) and/or

which are recognisable during our quality control by means of random sampling. Apart from that, it depends on the extent to which an inspection is feasible in the ordinary course of business, considering the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty to examine, our notice of defect shall be deemed to have been given without undue delay and in good time if it is sent within five working days of discovery or, in the case of obvious defects, of delivery.

(6) Subsequent performance shall also include the removal of the defective Goods and their re-installation, provided that the Goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, shall be borne by the supplier even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognised or were grossly negligent in not recognising that there was no defect.

(7) Notwithstanding our statutory rights and the provisions in para. 6, above, the following shall apply: If the supplier fails to fulfil its obligation to provide subsequent performance - at our discretion by remedying the defect (rectification of a defect) or by delivering an item free of defects (replacement delivery) - within a reasonable period set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this from the supplier or a corresponding advance payment. If the supplementary performance by the supplier has failed or is unreasonable for us (e.g., due to particular urgency, risk to operational safety and/or imminent occurrence of disproportionate damage), no deadline needs be set; we shall inform the supplier of such circumstances without delay.

(8) Furthermore, in the event of a material defect or defect of title, we are entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we are entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions. If the parties have concluded a quality agreement, mutual rights and obligations arising from this shall not be affected.

## **§ 7 Supplier recourse**

(1) The statutory claims for expenses and recourse within a supply chain (supplier recourse pursuant to §§ 478, 445a, 445b BGB or §§ 445c, 327 (5), 327u BGB) shall accrue to us without restriction in addition to the claims for defects. In particular, we are entitled to demand from the supplier exactly the type of subsequent performance (repair or replacement) that we owe our customer in the individual case; in the case of Goods with digital elements and/or other digital content, this also applies with regard to the provision of necessary updates. Our statutory right of choice (Section 439 (1) BGB) shall not be restricted hereby.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to §§ 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) of the German Civil Code), we shall notify the supplier and request a written statement setting out the facts in brief. If a substantiated statement is not made within a reasonable period and if no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the supplier shall be responsible for proving the contrary.

(3) Our claims from supplier recourse apply as well if the defective Goods have been combined with another product and/or processed in any other way by us, our customer and/or a third party, e.g., by installation, attachment, or assembly.

## **§ 8 Producer's Liability**

(1) If the supplier is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause lies within its sphere of control and organisation and it is liable itself in relation to third parties.

(2) Within the scope of its indemnification obligation, the supplier shall reimburse expenses pursuant to §§ 683, 670 of the German Civil Code (BGB) arising from or in connection with a third-party claim, including recall actions dutifully carried out by us. We shall inform the supplier of the content and scope of recall measures - insofar as this is possible and reasonable - and give him the opportunity to comment. Further legal claims remain unaffected.

(3) The supplier shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

## **§ 9 Statute of Limitations**

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions unless otherwise stipulated below.

(2) Notwithstanding § 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims for defects shall be 3 years from the transfer of risk. The 3-year limitation period shall apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for surrender of Goods (§ 438 (1) No. 1 BGB) shall remain unaffected; in addition, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right - in particular in the absence of a limitation period - against us. The mandatory provisions of § 445b, 478 (2) German Civil Code (BGB) remain unaffected.

(3) The limitation periods of the law on sales including the above extension shall apply to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply to these, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

(4) Upon receipt of our notice of defect by the supplier, the limitation period for warranty claims shall be suspended until the supplier rejects our claims and/or declares the defect eliminated and/or otherwise refuses to continue negotiations on our claims. In the event of replacement delivery and rectification of defects, the warranty period for replaced and rectified parts shall begin again unless we had to assume from the supplier's conduct that the supplier did not consider itself obligated to undertake the measure but only undertook the replacement delivery or rectification of defects as a gesture of goodwill or for similar reasons.

## **§ 10 Property Rights**

(1) Supplier warrants that the Goods delivered by it do not infringe any third-party property rights in countries of the European Union and/or other countries in which it manufactures the Goods and/or has them manufactured. The same shall apply to countries to which the Goods are to be delivered in accordance with their intended use, as assumed at the time of conclusion of the contract. The supplier is obligated to indemnify us against all claims made by third parties against us due to such infringements of industrial property rights and to reimburse us for all necessary expenses in connection with such claims. This shall not apply insofar as the supplier is neither responsible for the infringement of industrial property rights nor should have been aware of the infringement at the time of delivery if it had exercised due commercial care.

(2) Our further legal claims due to defects of title of the products delivered to us remain unaffected.

## **§ 11 Spare Parts**

(1) The supplier is obligated to keep spare parts for the Goods in stock for the period of their typical, expected lifespan, but at least for ten (10) years after their delivery.

(2) If the supplier intends to discontinue the production of spare parts for the Goods with or after the expiry of the period specified in para. 1, it shall notify us of this immediately after the decision, but at least six months prior to the production being discontinued. Prior to discontinuing production, the supplier shall enable us to stock up on spare parts in quantities customary in the market. If no agreement is reached on a delivery or if the supplier discontinues the delivery of spare parts without notification, he is obligated to hand over to us without delay upon request the documents required to produce the spare parts. In this case, we are entitled to use the documents free of charge.

(3) The supplier's list prices or - if there are no list prices - the customary market prices, in each case with the customary deductions, will apply to the purchase of spare parts.

## **§ 12 Confidentiality**

(1) The supplier is obligated to keep the terms of the order as well as all information, documents, samples and specimens provided and/or disclosed to him by us for this purpose ("Confidential Information") secret for a period of five years after the date of delivery, to make them accessible to

third parties only with our consent and to use them only for the execution of the order as well as other requests from us.

The obligation to maintain secrecy ceases insofar as information is publicly accessible and/or - without a breach of the obligation to maintain secrecy on the part of the supplier - becomes so, the supplier receives it from third parties without an obligation to maintain secrecy, develops it himself without recourse to our information and/or a judicially and/or officially ordered duty of disclosure exists.

(2) The supplier shall return Confidential Information immediately after the processing of the order and/or upon our request or - if no return is possible - delete them; the only exceptions to this are the storage within the scope of statutory storage obligations and the storage of data for backup purposes within the scope of the usual data backup (together "Retained Information"). The confidentiality obligation shall continue to apply without restriction to Retained Information.

(3) Insofar as the supplier produces Goods on our behalf and/or with our assistance – e.g., by providing models, drawings, etc. – the Goods of the relevant type may be produced exclusively for us and delivered and sold exclusively to us.

(4) Without our prior consent, the supplier may not refer to the business relationship in advertising material, brochures, etc. and may not exhibit delivery items manufactured exclusively for us.

(5) The supplier shall obligate its sub-suppliers in accordance with this § 12.

(6) For each culpable breach of the confidentiality obligations under this § 12, the supplier shall pay a contractual penalty to be determined by us in good faith and for its appropriateness reviewable by the competent local or regional court. The payment of the contractual penalty does not exclude the assertion of any existing claim for injunctive relief and/or, if applicable, any further claims for damages. The penalty shall be due for each case of infringement. For violations committed intentionally, the invocation of a continuation connection is excluded.

(7) Separate confidentiality agreements and statutory regulations on the protection of secrets remain unaffected.

### **§ 13 Compliance with laws**

(1) In connection with the contractual relationship, the supplier is obligated to comply with the relevant statutory provisions applicable to it. This applies in particular, but without limitation, to anti-corruption and money laundering laws and the German Supply Chain Duty of Care Act (Lieferkettensorgfaltspflichtengesetz) as well as antitrust, labour and environmental protection regulations. The supplier warrants that the Goods delivered by it comply with all relevant requirements for placing on the market in the European Union and the European Economic Area.

(2) Upon request, the supplier will provide us with evidence of conformity pursuant to para. 1 by submitting suitable documents.

(3) The supplier undertakes to comply with the Code of Conduct for Suppliers of Kolibri Beteiligungsgesellschaft mbH & Co. KGaA (available at [www.zeitfracht.de/nachhaltigkeit-zeitfracht/](http://www.zeitfracht.de/nachhaltigkeit-zeitfracht/)) (hereinafter the "Supplier Code") and to communicate to its subcontractors and suppliers the content of the Supplier Code or rules of conduct that are at least as effective in terms of content and to take all necessary precautions for the implementation of these requirements.

(4) The supplier makes reasonable efforts to ensure that its sub-suppliers comply with the obligations incumbent on the supplier under this § 13 and cooperates in the fulfilment of our obligations relating to the supplier and its sub-suppliers, in particular obligations to provide evidence.

### **§ 14 Place of jurisdiction, applicable law, severability**

(1) The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Metzingen. However, we shall be entitled to sue the supplier at his ordinary place of jurisdiction.

(2) The contracts concluded between us and the supplier shall be governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods.

(3) Should any provision of these Terms and Conditions of Purchase be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions of this contract. The same shall apply in the event of a loophole. A suitable provision shall then replace the invalid or

unenforceable provision or close the loophole. This provision should come as close as possible to what the parties intended or - in the event of a loophole - would have intended according to the meaning and purpose of these Terms and Conditions of Purchase.

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