

- 1. Validity:**
All orders for goods or services by KMW shall be placed in accordance with these terms and conditions of purchase. The general terms and conditions of the supplier shall be excluded. Acceptance of the goods/service or payment shall not indicate acceptance of the latter terms and conditions.
- 2. Scope of order**
The scope of the order shall be based on the order issued by KMW (incl. appendices), even if this is not confirmed by the supplier. Subsequent additions made verbally/by telephone shall exclusively be rendered effective if their content is later confirmed in writing by the Purchasing department of KMW.
- 3. Order confirmation**
KMW is entitled to revoke the order if the supplier does not confirm it in writing within 2 weeks of receipt of the order; a revocation of this kind shall not form the basis for any claims by the supplier against KMW for compensation in damages, refunding of costs, etc. If the supplier accepts the order from KMW with deviations then the supplier shall clearly point out what these deviations are. An agreement shall only come into effect if KMW has agreed to these deviations in writing.
- 4. Price and terms of payment**
Payments do not indicate any acceptance that the delivery/service is in conformity with the contract.
- 5. Deadlines and missed deadlines**
The deadlines for delivery and service provision specified in the order are binding. If the supplier recognizes that the agreed deadlines cannot be kept, then it shall inform KMW in writing immediately with information about the reason and duration of the delay. The agreed delivery deadline shall not alter as a result of the notification of an expected delay in delivery. All costs accruing to KMW as a result of nonfeasance of or belated information shall be charged to the supplier. KMW reserves the right to assert further legal claims even if a contractual penalty has been agreed for the eventuality of delayed delivery. KMW may demand the contractual penalty up to the time of the last payment, or offset the penalty against due payments, even if it accepted the service without any special reservation. If the agreed delivery deadline is not met due to a circumstance attributable to the supplier, then KMW shall be entitled, after the expiry of a subsequent period of 2 weeks without result, to demand compensation due to non-performance or to withdraw from contract, at KMW's discretion.
- 6. Delivery and dispatch**
- 6.1. The shipment paper and delivery note shall include KMW's order data, in particular the order number, as well as the weight, the type of packaging and, if necessary, the shelf life of the material. The costs of this shall be borne by the supplier. KMW shall be entitled to refuse deliveries that are not made/not indicated correctly, at the supplier's expense. Unless otherwise expressly agreed, the place of performance for the obligation to deliver and perform shall be the consignee's address specified by KMW. Shipping is carried out at the supplier's risk. The risk for any degradation, including coincidental ruining, remains with the supplier until handover at the agreed consignee's address.
- 6.2. Deliveries shall only be accepted on Mondays to Thursdays from 08:00 - 15:00, on Fridays from 08:00 - 12:00 noon (with the exception of statutory public holidays and shut-down days).
- 6.3. Before accepting an order, the supplier undertakes to check whether the goods or the constituents of the goods specified in the order are to be classified as hazardous goods (e.g. paints, adhesives, chemicals or combustible, oxidizing, potentially explosive, flammable, poisonous, radioactive or corrosive goods, or goods liable to self-heating). In such cases, the supplier shall inform KMW, shall comply with the relevant current, national and internationally valid regulations (e.g. GefStoffV, GGSV, GGVSee, BioStoffV, UN/ICAD, IATA, EVO/RID, KVO/ADR) as well as any possible deviating or additional regulations of the destination country, and shall send to KMW as rapidly as possible and in duplicate the necessary, binding declarations (e.g. the corresponding EC safety data sheets) after they have been filled in correctly and signed in a legally binding manner.
- 7. Invoices**
- 7.1. All invoices shall contain the KMW order data, in particular the order number.
- 7.2. The period allowed for payment shall not start to expire on presentation of invoices that are not in the proper form or are incomplete, or if acceptance documents/certificates are missing.
- 8. Transfer of ownership and risk**
- 8.1. The risk for accidental loss and accidental deterioration of the goods remains with the supplier until handover at KMW. If the goods are sent back due to a warranty claim then the risk shall revert to the supplier when the goods are loaded back onto the means of transport for the return journey.
- 8.2. Ownership shall be transferred to KMW on completion of the unloading procedure at the point of destination.
- 8.3. Tooling and other means of production paid for by KMW shall only be made available to third parties for the purpose of undertaking the order and only with the prior written consent of KMW. They shall only be allowed to be used by the supplier in order to undertake the order in question, and shall be returned to KMW immediately on request, at the supplier's expense. They shall be carefully looked after and kept safely by the supplier, and appropriately insured. Ownership of this tooling and other means of production is transferred to KMW on payment by KMW in accordance with Articles 929, 930 of the German Civil Code (BGB). The handing-over shall be replaced by the safekeeping mentioned above.
- 9. Packaging**
Packaging shall be charged at no more than cost price.
- 10. Outgoing and incoming check, complaint period, right of access**
- 10.1. The supplier shall ship only those parts that have been fully inspected and found to be okay and therefore KMW waives a detailed receiving inspection. KMW shall submit a complaint in the event of obvious transport damage or concealed defects, immediately on discovery of the same.
- 10.2. Subject to prior notification, KMW and/or its ordering customer shall be afforded unrestricted access to the production facilities in question in order to conduct a quality inspection at the supplier's premises.
- 11. Warranty**
- 11.1. The supplier shall guarantee that the delivery/service is free from defects and suitable for the agreed purpose, and that it has the specification agreed in the order. With regard to wearing parts, the supplier shall at least guarantee that these shall withstand the usual number of operating hours without becoming defective. The supplier assures that its delivery/service is in accordance with the rules of technology, the regulations and directives promulgated by the legislature, supervisory authorities, employer's liability insurance associations and the VDE, as well as the applicable EU Directives with regard to configuration, accident prevention and environmental protection, and that it has successfully passed all the environmental impact assessments prescribed for the product category.
- 11.2. The warranty period shall be 36 months from delivery to KMW. This also applies to spare parts starting from their installation/completion of improvement measures. The warranty period shall be extended by downtimes of the KMW product occasioned by defects and work conducted in order to rectify defects.
- 11.3. Defects in the delivery and service shall be rectified by the supplier immediately upon demand, either by elimination of the defect or by delivery of a non-defective item, at KMW's discretion. All costs arising from the supplementary performance, in particular inspection costs, labor and material costs, installation and removal costs, transport and disposal costs as well as additional startup costs, shall be borne by the supplier. In addition, KMW shall be entitled to assert its statutory claims, in particular claims for cancellation of contract, reduction of the purchase price and damages, to the extent that the conditions laid down in law are fulfilled.
- 11.4. In case of urgency, a delay by the supplier in rectifying the defect, unreasonableness of the subsequent fulfillment by the supplier or refusal by the supplier to rectify the defects, then KMW shall be entitled, after having set a subsequent period of 2 weeks, to rectify the defects itself at the supplier's expense. The statutory claims by KMW shall remain unaffected by this.
- 12. Spare parts**
The supplier shall guarantee availability of all spare parts required for the function of the delivery/service for a period of 10 years from delivery. If the supplier is no longer able to meet this obligation then it shall inform KMW of this situation immediately in writing. If the supplier violates its obligation to make spare parts available then KMW shall be entitled to copy the part that is no longer available, at the supplier's expense. The supplier shall assist KMW in all respects, such as by making production drawings available and obtaining any industrial rights that may be required.
- 13. Liability**
The statutory provisions apply. The supplier shall indemnify KMW from all claims by third parties attributable to a culpable breach of the supplier's obligations.
- 14. Product liability**
- 14.1. The supplier shall exempt KMW from claims for compensation in damages asserted against KMW due to a product fault attributable to the supplier, and shall provide evidence to KMW on demand that it is covered by a product liability insurance policy of sufficient value.
- 14.2. If the supplier does not provide evidence or if the supplier refuses to increase the amount insured to an appropriate value suggested by KMW then KMW shall be entitled to withdraw from the agreement and to demand compensation in damages.
- 15. Industrial rights**
- 15.1. The supplier guarantees that all deliveries are free from third-party industrial property rights and, in particular, that no patents, licenses or other third-party industrial rights are violated by the delivery and use of the delivery items.
- 15.2. The supplier shall indemnify KMW and the latter's customers from claims by third parties arising out of any infringements of industrial rights, and the supplier shall also bear all the costs incurred by KMW in this regard.
- 15.3. KMW shall be entitled to obtain permission to use the relevant delivery items and services from the entitled owner, at the supplier's expense.
- 16. Rights of use**
KMW shall receive from the supplier all rights to the results which arise or have arisen as part of placement of a development order (including ownership of all documents/documentation that are/is or have/have been prepared as part of the development). Equally, KMW shall receive the irrevocable, cost-free, non-exclusive and transferrable right of use, which can also be sublicensed, over all background rights which are required in order to use the results of the development.
- 17. Drawings, documents, tooling, means of production, confidentiality**
- 17.1. KMW reserves all rights of ownership, copyright and other industrial rights to drawings, models, tooling, means of production, design diagrams and all other documents given to the supplier for the purpose of carrying out the order, as well as the know-how incorporated therein. The items are only allowed to be made accessible to third parties for the purpose of carrying out the order, and only with the prior written approval of KMW. They shall only be allowed to be used by the supplier in order to undertake the order in question, and shall be returned to KMW immediately on request, however no later than on completion of the order. They shall be carefully looked after and kept safely by the supplier, and appropriately insured.
- 17.2. The supplier shall be obliged to treat all non-generally known entrepreneurial details of the contractual relationship with KMW as a commercial secret, and not to disclose these details to third parties even after termination of the contractual relationship.
- 18. German foreign trade law**
If the goods ordered by KMW represent an asset that is classified in accordance with the export list (AL) - Part 1A - of German export regulations, then the supplier shall be obliged to identify the article in question with corresponding clarity in its order confirmation in accordance with the nomenclature of goods (customs tariff number) for foreign trade statistics.
- 19. Miscellaneous**
- 19.1. The assignment of payment claims arising from this contract shall require the prior written approval of KMW.
- 19.2. Involvement of subcontractors or suppliers shall require the prior written approval of KMW. If an approval is granted, this shall not affect the legal responsibility.
- 19.3. Following prior notification, KMW shall be entitled to examine the production status during the normal business hours of the supplier, and to demand information regarding the production status.
- 19.4. INCOTERMS in the most recent version as at conclusion of the contract shall apply with regard to the interpretation of commercial terms.
- 19.5. KMW is entitled to demand technical modifications to the delivery item, even after completion of the agreement, providing these modifications can be reasonably carried out by the supplier. The effects of such a contractual modification shall be taken into account appropriately by both parties, in particular with regard to cost increases or reductions as well as delivery deadlines. All modifications requested by the supplier that have an effect on the form, fit and function of the delivery items, which influence the interfaces, the documentation, spare parts already delivered, the price, the specification and/or the delivery deadline shall require the prior written approval of KMW.
- 19.6. German law shall apply, to the exclusion of United Nations Convention on Contracts for the International Sale of Goods.
- 19.7. The court of jurisdiction is Munich. However, KMW reserves the right to take legal action against the supplier in any other permitted legal court.
- 19.8. In the event that a provision of these general terms and conditions of business is or becomes ineffective in whole or in part, this shall not affect the validity of the other provisions. An ineffective provision shall be replaced by one that is feasible in accordance with the German Civil Code (BGB), which comes closest to the contents of the invalid provision and which most closely corresponds to the parties' economic interests in the invalid provision.
- 19.9. QS-0001 applies in addition, and can be downloaded from www.kmweg.de.