

General Terms and Conditions of Purchase

1. General

These GTCs apply to all orders placed by Kocks Ardelt Kranbau GmbH (KAK) with its suppliers. All KAK orders shall be governed exclusively by these GTCs. If the supplier's General Terms and Conditions of Trade are divergent from, inconsistent with, or supplementary to our own GTCs, they shall only be accepted as part of the contract if and to the extent to which KAK has expressly agreed to their validity in writing. The acceptance of goods or services by KAK shall not be deemed to represent an acknowledgment of the supplier's GTCs, even if the latter has declared its intention to supply goods or services only in accordance with its own GTCs. The GTCs of KAK shall apply equally to all future business between KAK and the supplier, even if no explicit reference is made to them in individual cases.

2. Orders and conclusion of a contract

2.1 Only orders placed in writing shall be binding. The supplier must undertake to confirm acceptance of the order in writing within a period of two weeks. Until such time as it receives written confirmation, KAK shall be entitled to cancel an order. If the supplier accepts the order after this deadline, this shall represent a new offer which is subject to acceptance by KAK.

2.2 Amendments or supplements to an order are subject to written confirmation by the responsible procurement department of KAK; the same shall apply to verbal agreements with other departments of KAK which constitute an amendment to the contract.

3. Performance of service

The supplied item must have the agreed characteristics specified in the contract, comply with good technical practice, be state-of-the-art, and correspond to the order documents, drawings, test specifications and technical delivery specifications of KAK. The supplier must undertake to comply with all applicable laws and ordinances and all relevant regulations imposed by authorities and trade associations.

3.1 The right to enforce a contractual penalty need not be reserved upon acceptance, but a deduction may be made from the amount of the final invoice.

4. Terms of delivery, default and contractual penalty

4.1 The dates and periods of delivery stipulated by KAK and specified by the supplier are binding. Delivery periods commence on the date of the order. Requests for delivery become binding no later than two weeks after their receipt by the supplier, unless the latter objects prior to this deadline.

4.2 The supplier must undertake to inform KAK immediately if circumstances arise or become apparent which will make it impossible for the agreed delivery deadline to be met.

4.3 If the supplier is in default, KAK shall be entitled to charge 0.5 % of the net price of the delayed goods for each full week of delay, capped at a maximum of 5 % of the net price of the delayed goods, as compensation for any loss or damage incurred as a result of the delay; KAK is not obliged to provide evidence of such loss or damage. It is the supplier's prerogative to demonstrate that the loss or damage sustained by KAK is less than that claimed. KAK reserves the right to assert claims for additional loss or damage.

4.4 If goods are delivered earlier than agreed, KAK is entitled to return them at the supplier's expense.

5. Dispatch, packaging

Goods are to be dispatched to the delivery address provided by KAK at the expense and risk of the supplier. Faulty goods shall be returned by KAK on the same basis. The shipping method is to be agreed with KAK. The goods shall be packed at the expense of the supplier. KAK is not obliged to return the packaging.

6. Transfer of risk

6.1 In the case of sales contracts, risk shall be transferred to KAK when receipt of the goods is confirmed at the delivery address provided by KAK.

6.2 In the case of contracts for services and contracts for labour and materials, risk shall be transferred no sooner than once the entire order has been completed and there has been joint acceptance of performance. Formal acceptance shall be deemed to have been agreed.

7. Defective performance

7.1 If the supplier fails to fulfil a contractual obligation incumbent upon it as required, KAK shall be entitled to enforce the full range of legal claims. Subject to clause 7.2, the expiry of these claims shall be governed by the relevant statutory provisions.

7.2 Unless a longer deadline is allowed for under statutory provisions, KAK shall be entitled to assert claims in respect of the delivery of defective goods for a period of three years. This period shall commence upon the transfer of risk.

7.3 If parts are provided subsequently by the supplier or are reworked, i.e. if they are replaced or repaired, a fresh deadline shall be set. Provided the supplier has been notified of the defect by the agreed deadline, the period of limitation for warranty claims in respect of defects shall be suspended for as long as the supplier has not definitively rejected them in writing.

7.4 If the goods or services provided by the supplier are defective and KAK has notified the latter accordingly, KAK shall be entitled to have the defects repaired at the supplier's expense if this is required in order to avoid or minimise disruption to KAK's operations.

7.5 If the order is to be completed in instalments, KAK shall be entitled to withdraw from the entire contract even if the supplier fails to fulfil its contractual obligations as required in respect of just one instalment.

8. Drawings and other documents

8.1 KAK shall retain its ownership of and copyright on illustrations, drawings, calculations and other documents entrusted to the supplier. They may only be used for manufacturing purposes on the basis of the order placed by KAK, and must be returned to KAK without further request following completion of the order.

8.2 Once the work has been completed, the supplier must send KAK the drawings, calculations, and other technical documents relating to the delivery without delay in the number and type requested in respect of the actual design supplied, and must transfer ownership of these to KAK at no cost. KAK and third parties may then use these free of charge for maintenance and alteration work and to manufacture spare parts.

8.3 KAK's approval of drawings, calculations and other technical documents shall not affect the warranty obligations of the supplier. Unless otherwise expressly agreed, the same shall apply to suggestions and recommendations made by KAK.

9. Supplies

9.1 Materials or parts made available to the supplier by KAK for working or processing purposes, as well as means of production or tools provided by KAK, shall remain the property of the latter and may only be used in the preparation of its own orders. The supplier shall be liable for any loss or damage. It must store the material for KAK with the due care and diligence of a prudent businessman, and must undertake to notify KAK immediately if the latter's property is seized or at threat of seizure whilst in the supplier's possession. All costs of intervention shall be borne by the supplier.

9.2 Processing and reconfiguration by the supplier of materials provided to it by KAK shall proceed on the latter's behalf; KAK shall acquire direct title to the reconfigured goods. If material which has been provided is combined or inseparably mixed with the materials of others, then KAK shall acquire co-ownership of the new goods in the proportion of the value of KAK's goods to that of the other items processed or mixed with them. If mixing takes place in such a way that the supplier's item is to be regarded as the main item, then it is agreed that the supplier shall transfer a proportional share to KAK. The supplier shall keep the sole title or co-title on behalf of KAK.

10. Delivery under reservation of title

KAK recognises any reservation of title on the part of the supplier with regard to unprocessed goods stored with KAK, but only until such time as the goods are processed, combined or mixed with other items. The assignment of KAK's claims to the supplier arising from the resale of these goods is also excluded. Once payment has been made for them, all items shall become the unrestricted and sole property of KAK.

11. Scheduled completion dates and progress reports

11.1 The supplier must provide KAK with a detailed completion timetable within two weeks of the original documents being handed over and the contract entering into force. This timetable must include information on the ordering and supply of materials, cutting, the start of assembly, the beginning of spatial construction of the various elements, mechanical treatment, sandblasting and preservation work as well as readiness for dispatch. The timetable must also schedule in adequate time for inspections to be carried out at the various stages of manufacture.

11.2 All deadlines and periods specified in the completion timetable are binding intermediate deadlines and periods respectively.

11.3 The supplier must notify KAK in writing at two-weekly intervals about the progress of the work. All progress reports must be sent to KAK by email.

11.4 If it becomes apparent that the labour force employed for the purpose is sufficiently inadequate as to make it clearly impossible to meet the deadlines and/or periods specified in the completion timetable, then the supplier must immediately remedy the situation at KAK's request. The supplier must itself meet the costs of the additional labour or materials required to remedy the situation (e.g. additional recruitment, overtime, extra shifts, more resources, etc.). The supplier must deploy or procure sufficient labour and/or resources as to provide an adequate guarantee that lost time will be made up and manufacturing returned to schedule.

11.5 If a deadline fails to be met by more than two weeks from the date specified in the detailed completion timetable, KAK shall further be entitled to grant the supplier two weeks in which to take remedial action, and to notify the latter that it shall cancel the contract unless such action is taken. If, after the period of grace has been set, the supplier is unable to demonstrate to KAK that it will be able to provide the goods and services agreed in the contract either in accordance with the original detailed completion timetable or a modified timetable agreed between the supplier and KAK, then the latter shall not be required to extend the deadline further, but may instead cancel the contract with the supplier, order the goods or services owed by the supplier from elsewhere, and require the supplier to reimburse it for any resultant costs. If the supplier was culpably responsible for its failure to meet the deadline, it must also compensate KAK for any other loss or damage suffered by the latter in consequence of the supplier's failure to meet the deadline. Other statutory rights of KAK shall remain unaffected by this.

11.6 The terms and conditions of clauses 11.1 to 11.5 above shall not apply in the case of contracts concluded between KAK and the supplier for standard components mass-produced in large numbers by the supplier, which are subject to the Sales Convention.

12. Prices, terms of payment

12.1 Unless otherwise agreed, the prices quoted shall be binding and inclusive of statutory VAT. Price increases shall only be effective if confirmed in writing by KAK. Prices shall include carriage-free delivery as well as packaging, customs duties, insurance and assembly.

12.2 Payments shall be made by KAK subject to verification of the invoice. Where it has been agreed that payment is to be made on the basis of time and quantity, a charge may only be made in respect of documented times, materials and measurements/quantities first approved by KAK; such evidence must be enclosed with the invoice. KAK shall be entitled to assert rights of retention and set-off within the scope of the law.

12.3 Invoices shall be settled by KAK in cash or accepted bill within 20 days of delivery and receipt of the invoice with a 3 % discount, or net within 45 days of receipt of the invoice. If the supplier completes the order before the agreed delivery date, the payment period shall not commence until the date originally agreed, even if the goods or services have already been accepted.

12.4 The assignment of payment claims by the supplier requires the written consent of KAK. If the supplier is a trader who assigns a claim without the consent of KAK, the latter shall further be entitled to discharge its liabilities by effecting payment to the supplier or to offset the payment against existing claims.

12. Other provisions

13.1 Contracts between KAK and the supplier shall be governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG, the Vienna Convention). The place of fulfilment for the services of the supplier shall be the place of use, and for payments shall be the headquarters of KAK. Where admissible by law, the legal venue shall be the headquarters of KAK or, at the discretion of KAK, the legal venue of the supplier.

13.2 The supplier must undertake to treat as trade secrets all commercial and technical details which are not in the public domain and to which it becomes privy as a result of the business relationship, and to place any sub-contractors under an equivalent obligation, provided that the information concerned has not become generally known.

13.3 If provisions of a contract between KAK and the supplier are unenforceable, this shall not affect the enforceability of the contract as a whole. A ruling which serves to achieve the commercial purpose of the unenforceable provision shall replace any gap resulting from the removal of an unenforceable provision.

13. Data protection

The supplier notes and consents to the fact that KAK may collect, store, process, use, divulge to third parties or delete any customer information arising from the business relationship within the scope of the intended purpose of the contract. Such data might include addresses, quantities, billing data, etc.