

## General Conditions of Purchase and Sale

Konzelmann GmbH,  
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### **I. Validity of Conditions**

These General Conditions of Purchase and Sale (AGB) apply to all Konzelmann GmbH's legal business with companies and other parties in accordance § 310 of the Civil Code. They apply exclusively to all business of ours. Conditions of business of our contractual partners which deviate therefrom will only apply if this is expressly acknowledged by us in writing and also if we carry out legal business without further ado and unconditionally while being aware of conflicting conditions of business of our contractual partners.

### **II. Conditions of Purchase**

#### **1. Orders and confirmation**

- 1.1 Our orders issued in writing are valid. Verbal agreements require our written confirmation.
- 1.2 Our order is to be confirmed immediately and accepted as issued. In the event of the absence of a written confirmation within one week, the customer is entitled to cancel. Cancellations of supplies will however be binding if the supplier does not cancel within 3 days of receipt.
- 1.3 The customer may request modifications to the construction and execution of an object to be supplied if this is reasonable for the supplier.

#### **2. Prices, Payment and Discount**

- 2.1 In the absence of agreement otherwise, prices and discounts given in our order are fixed prices which include delivery free ex firm including packing.
- 2.2 We make payment within 14 days with a 3% discount, within 30 days strictly net.
- 2.3 In the event of deficient supply, the customer is entitled to hold back payment proportionally until due fulfillment of the supply.

#### **3. Delivery Time, Delay in Delivery and Transfer of Risk**

- 3.1 The delivery time given in the order is binding.
- 3.2 The supplier is obliged to compensate the customer for damage through delay.
- 3.3 This is limited to compensation for damage, extra freight costs, retrofitting costs and extra expenditure for purchasing cover after the unsuccessful setting of a subsequent deadline or in the event of disappearance of interest in the supply.
- 3.4 The supplier bears the material risks until acceptance of the goods by us or our representative at the place where the goods are to be delivered.

#### **4. Guarantee**

- 4.1 Our obligation to carry out examination is restricted to quantity and to transport losses. Clear shortages must however be duly reported if they are advised within one week of delivery and unclear shortages within one week of discovery.
- 4.2 Reduction or limitation of our suppliers' liability is ineffective. Legal provisions apply.

#### **5. Product Liability, Rights of Protection**

- 5.1 If the supplier is liable for a product loss they shall release us from any claim by a third party and bear all costs and expenses, including any legal prosecution or recall action.
- 5.2 The supplier guarantees that no rights of third parties will be harmed in connection with their supply. If a third party makes a claim against us because their rights have been harmed, the supplier will be obliged to immediately discharge us from these claims and the costs arising in connection therewith.

#### **6. Reservation of Proprietary Rights**

The reservation of proprietary rights by the supplier only applies if relating to our payment obligation arising from the respective supply, to which the supplier reserves proprietary rights. Extended reservation of proprietary rights is not permissible.

### **III. Conditions of Sale**

#### **1. Offer, Order and Contract**

- 1.1 Our offers are unconditional and not binding unless the obligatory nature thereof is expressly declared. Orders issued on the basis of our offer as well as declarations of acceptance and any orders by our customers will not become binding until our written confirmation, unless expressly determined otherwise.
- 1.2 If our confirmation deviates from a customer's order, the customer will be obliged to object in writing to our confirmation immediately, i.e. within 3 days at the most, otherwise their silence will be considered as acceptance of the supplies listed in the confirmation of the order under local conditions.
- 1.3 Products manufactured by us correspond in quality to that of the output sample received by the customer from us on request. Our indications on technical standards serve only to describe performance and not as a guarantee of quality.

#### **2. Delivery and Service Time**

- 2.1 Service deadlines and times are only binding if they have been expressly agreed by us as binding and all documents and permits necessary for delivery have been presented to us.
- 2.2 Delivery and service time are extended accordingly in the event of circumstances for which we are not responsible, in particular, strike, and lock-out and supply difficulties of the manufacturer.
- 2.3 We are entitled to make partial and advance deliveries at any time unless a uniform price for the supply of services has been expressly agreed. Reasonable deviations of 10% upwards or downwards in amounts ordered are permissible.

#### **3. Transfer of Risk and Despatch**

- 3.1 Risk is transferred to the customer as soon as the products have been transferred to the party carrying out transport or have left our works for the purpose of despatch or readiness for despatch has been advised, even if freight-free delivery has been agreed.
- 3.2 Insurance against transport losses will only be concluded at the express request of the customer in their name and at their expense.

#### **4. Prices and Conditions of Payment**

- 4.1 The prices given by us are to be considered net ex works, 2010 Incoterms, excluding packing, freight, carriage and transport insurance. Legal Value Added Tax is not included in prices.
- 4.2 Payments are to be made within 20 days strictly net after date of invoice in addition to currently applicable Sales Tax. Deductions are not possible.
- 4.3 Offsetting our bills outstanding with counter-claims by the customer is excluded unless the counter-claim has been acknowledged or legally established.
- 4.4 All payments are to be made exclusively in Euros to Konzelmann GmbH.
- 4.5 Unless otherwise agreed, the purchase price (net) for tools is to be paid 40% for tools on the order being issued, 50% on presentation of the first sample and 10% after release - at the latest, however, four weeks after presentation of the first sample test report. On confirmation of requests for modification by the customer before a tool is ready, all costs incurred until then must be paid provided they exceed the deposit.
- 4.6 In the event of the agreed payment deadline being exceeded, interest amounting to the legal rate of interest of 8% over and above the current basic rate of interest of the EZB will be charged, provided the supplier cannot prove a higher loss. The customer reserves the right to prove a lower loss.
- 4.7 We reserve the right to change prices reasonably, if after conclusion of the respective contract if falls or increases in prices occur, particularly because of the conclusion of tariffs and the costs of raw materials and energy. We will advise the customer thereof on request.

#### **5. Reservation of Proprietary Rights**

- 5.1 We retain ownership of our goods until receipt of all payments arising out of the contract with our customer.
- 5.2 If the objects of the supply are processed or remodelled by the customer, this will always be for us as the manufacturer. If our ownership lapses through combining, mixing or processing with other objects which do not belong to us, the customer's ownership of the uniform item will pass to us in proportion (invoice value). The customer will safeguard our ownership at no cost.
- 5.3 The customer is entitled to process and sell goods subject to reservation of proprietary rights in normal business provided they are not in arrears. Pledging or transfers of security are not permitted. The customer will pass all receivables in respect of goods subject to reservation of proprietary rights obtained by the customer from resale or on another legal basis to us by way of security.
- 5.4 The customer shall take the necessary measures to preserve our goods subject to proprietary rights. In the event of action by third parties in respect of goods subject to proprietary rights, the customer will indicate our ownership and notify us immediately.
- 5.5 In the event of breach of contract by the customer, in particular delay in payment, we shall be entitled to take back goods subject to reservation of proprietary rights. Taking back the goods does not mean withdrawal from the contract unless we have expressly stated this in writing. We are authorised to use the goods after taking them back, the proceeds from use being charged to the liability of the customer – less reasonable costs of use.

#### **6. Claims for Defects, Liability and Limitation**

- 6.1 Our liability is limited to intent and serious negligence unless we are guilty of violation of a basic contractual obligation. Basic contractual obligations are obligations which are necessary to defend specific contractual interests, observance of which our customer may normally rely on, and those which are considered within the limits of reasonable liability for us, such as, for example, the transfer of goods free of material and legal defects, transfer of ownership and acquisition of ownership after full payment.
- 6.2 With the exception of the cases in § 438 para. 1 sect. 2 of the Civil Code and § 634 a para. 1 sect. 2 of the Civil Code, all claims for defects against us are subject to one year's limitation from delivery of the goods to the customer.
- 6.3 The customer shall inform us of obvious defects immediately, at the latest, however, within 1 week of delivery, and those which are not obvious within 1 week of discovery, but 4 weeks after the date of receipt of the goods at the latest.
- 6.4 If we send the customer output samples, they shall inform us of obvious defects in accordance with the above arrangement. If due notification is not made, the customer may no longer invoke defects in the output sample already in existence at the time of delivery of the finished products.

#### **7. Moulds (Tools)**

- 7.1 The prices given by us for moulds also include the costs of a single sample-taking. Costs of tests and processing equipment as well as of changes made by the customer are not included. Costs of further sample-taking for which the supplier is responsible, will be at their expense.
- 7.2 Unless otherwise agreed, we remain the owners of the moulds produced by ourselves or by a third party instructed by us for the customer.
- 7.3 In the case of unused tools we will charge storage costs with effect from 12 months of the last production. These amount overall to €5.90 per tool per month.

#### **8. Supplies of Materials**

- 8.1 If materials are supplied by the customer, they shall be duly delivered in accordance with an agreed specification and in impeccable condition at their own expense and risk with a reasonable extra charge for quantity of a minimum of 5%.
- 8.2 In the event of failure to meet these conditions, the delivery time will be reasonably extended. Apart from cases of *force majeure*, the customer will bear any additional costs arising as well as for any interruptions in production caused thereby.

#### **9. Intellectual Property**

We reserve the patent rights for tools as well as for the drafts and preliminary products, drawings, cost estimates and similar information of a tangible and intangible nature – including of an electronic nature - associated therewith. Third parties should not be allowed access thereto. In return, we undertake to grant third parties access to information and documents marked as confidential by the customer only with the latter's agreement.

#### **10. Force Majeure**

*Force majeure*, labour disputes, unrest, official measures and other unforeseeable, inescapable and serious events will discharge the supplier from their obligation to deliver for the duration of the disturbance and for the extent of the effect thereof. This also applies if these events occur at a time when the supplier is in arrears. The supplier is obliged to give the necessary information immediately and adapt their obligations to the changed circumstances in good faith insofar as this is reasonable.

#### **IV. Final Provisions**

1. We reserve all rights due to us under the Copyright Law, in particular representations of a technical nature, such as drawings, plans, maps and sketches. They are to be used only in our interests and furthermore to be treated as confidential.
2. If individual regulations of these Conditions are or become ineffective, the effectiveness of the other regulations will not be affected thereby. If these Conditions contain loopholes, those regally effective regulations which the contractual partners would have agreed to in accordance with the economic aims set had they known of the loopholes, will be arranged to fill these loopholes.
3. The laws of the Federal Republic of Germany apply to all our legal business. Application of the United Nations Convention on Contracts for the International Sale of Goods – CISG of 11.04.1980 is excluded.
4. If our contractual partner is a business man, a legal entity in public law or a special fund under public law, the local jurisdiction for all disputes with us arising from our legal relationship is that of our registered office.