

# General Purchase Terms and Conditions of KDX Europe Composites R&D Center GmbH

## 1. General, Scope of Application

- 1.1 These General Purchase Terms and Conditions (hereinafter also "Purchase Terms") shall apply to all of our business relationships with our business partners and suppliers (hereinafter also "Vendors"). The Purchase Terms apply in particular to contracts regarding the sale and/or delivery of movable objects (hereinafter also "Goods") irrespective of whether the Vendor produces the Goods himself or purchases them from suppliers (Secs. 433, 651 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*)). The Purchase Terms, in their respectively applicable version, shall apply as a framework agreement also to future contracts regarding the sale and/or delivery of movable objects with the same Vendor, without us having to refer to these again in each individual case; in such event, we will immediately inform the Vendor of any changes to our Purchase Terms.
- 1.2 The Purchase Terms shall only apply if the Vendor is an entrepreneur (Sec. 14 BGB), a legal person under public law or a special fund under public law.
- 1.3 These Purchase Terms shall apply exclusively. Any diverging, contrary or complementary general terms and conditions of the Vendor shall only become an integral part of the contract if and to the extent that we have expressly accepted their validity. This consent requirement shall apply in any case, e.g. also where we accept a delivery from the Vendor without reservation even though we are aware of the Vendor's general terms and conditions.
- 1.4 Individual agreements made with the Vendor in the individual case (including side agreements, supplements and changes) shall always take precedence over these Purchase Terms. A written contract and/or our written confirmation shall be decisive with respect to the content of such agreements.
- 1.5 All statements and notifications of legal relevance required to be made by the Vendor to us after conclusion of the contract (e.g. setting deadlines, declarations of withdrawal) must be made in writing to be effective.
- 1.6 Any references to the applicability of statutory provisions are for clarification purposes only. The statutory provisions thus also apply without such clarification insofar as they are not directly changed or expressly excluded in these Purchase Terms.

## 2. Conclusion of Contract

- 2.1 Our order shall become binding at the earliest when submitted by us in writing or when we confirmed an orally placed order in writing. The Vendor shall inform us of any obvious errors (e.g. typing and calculation errors) and incomplete information in the order including the order documents prior to the acceptance to enable us to correct and/or complete the order.
- 2.2 The Vendor shall confirm our order in writing within a deadline of 5 business days or execute our order without reservation, in particular by way of dispatching the Goods (acceptance). A delayed or changed acceptance shall be considered a new offer and requires acceptance by us.

## 3. Performance, Delivery, Dispatch, Packaging, Passing of Risk

- 3.1 Delivery shall be made within Germany CIP (Incoterms 2010) to the place indicated in the order. If no place of destination is indicated and

nothing else has been agreed, delivery shall be made to our registered office: KDX Europe Composites R&D Center GmbH, Am Weigfeld 15, 83629 Weyarn. Deliveries can be made upon prior agreement or Mondays to Thursdays between 8:00 am and 4:00 pm and on Fridays between 8:00 am and 2:00 pm. The respective place of destination shall also be the place of performance (*Bringschuld*).

- 3.2 Unless expressly agreed otherwise, the delivery clause "DDP incl. Import VAT" (Incoterms 2010) agreed place of destination shall apply for deliveries from abroad, so that the Vendor pays the import VAT.

The risk of accidental loss or accidental deterioration of the Goods shall pass to us upon the handover of the Goods at the place of performance. Insofar as an acceptance has been agreed upon, this shall be decisive for the passing of the risk. Also in all other respects, the statutory provisions governing the provision of works and services shall apply to an acceptance. The Goods shall be considered consigned and/or accepted also when we are in delay with accepting delivery.

- 3.3 We are entitled to determine the mode of packaging and dispatch and will inform the Vendor accordingly as part of our order. Where we fail to do so, the Vendor must choose a mode of packaging and dispatch which is suitable for the respective Goods. In case of intentional or negligent non-compliance with this duty, all costs incurred such as compensation for damaged Goods, additional freight, disposal shall be borne by the Vendor. At our request, the Vendor shall take back all packaging free of charge.
- 3.4 Without our prior written consent, the Vendor is not entitled to have the performance it owes carried out by third parties (e.g. subcontractors). The Vendor shall bear the procurement risk for its performance, unless agreed otherwise in the individual case (e.g. sale of stocked goods).

## 4. Delivery Time and Default in Delivery

- 4.1 The delivery time indicated by us in the order shall be binding. Delivery deadlines are regarded as fulfilled where the Goods are received at the delivery address at the intended time.
- 4.2 The Vendor undertakes to inform us immediately in writing of any circumstances which might impair a timely delivery or performance as soon as such circumstances become apparent, stating the reason and the expected duration. We reserve the right to grant an extension of the delivery deadlines.
- 4.3 A delivery note must be attached to all deliveries, quoting the date (date of issue and dispatch), content of the delivery (article number and quantity) as well as our order reference (date and number). If the delivery note is missing or incomplete, we cannot be held responsible for any resulting delays in processing and payment.
- 4.4 We must be notified immediately in writing of any disruptions in the delivery/production process, also where parts sourced from or processed by third parties are concerned. This shall not affect the obligation to observe the agreed delivery deadlines.
- 4.5 Should the Vendor not effect its performance at all or not within the agreed delivery deadline or should it be in default, our rights – in particular the right to withdraw from the contract and to claim

- compensation – shall be determined by the statutory provisions. In addition, the Vendor is obliged to provide compensation for damage caused by the default pursuant to the statutory provisions. If the Vendor is in default, we may – in addition to further statutory claims – request liquidated damages in the amount of 0.25% of the net price per calendar day, however, not exceeding 5% of the net price of the Goods the delivery of which was delayed. We reserve the right to furnish proof that a greater damage was incurred. The Vendor may provide proof that no damage was suffered at all, or that a significantly lower damage was incurred.
- 4.6 The prerequisites of our default in accepting delivery and its consequences are determined by the statutory provisions. However, the Vendor must explicitly offer its performance even if a defined or definable calendar time has been agreed upon for an action or cooperative act on our part (e.g. provision of material). If we are in default with accepting delivery, the Vendor is entitled to claim compensation for its additional expenses pursuant to the statutory provisions (Sec. 304 BGB). Where the contract concerns a non-fungible object to be manufactured by the Vendor (customised product), the Vendor shall only have further rights if we have assumed an obligation to cooperate and are responsible for the failure to provide such cooperation.
- 5. Partial, Excess, Short and Premature Deliveries**
- 5.1 We are not obliged to accept partial deliveries which were not agreed upon. Where partial deliveries are agreed upon, we can determine their chronological order. The acceptance of a partial delivery shall not constitute an acknowledgement of the conformity of the entire delivery with the contract.
- 5.2 We are entitled to reject excess deliveries and short deliveries outside the commercially customary limits. Deliveries which deviate from the order volume by more than 5% must be approved beforehand by us in writing in any case.
- 5.3 We are not obliged to accept a premature delivery. In any case, we reserve the right to charge the storage costs to the Vendor's account until the actual due date. This shall not affect the time and consequences of the passing of risk.
- 6. Special Terms for Customer-specific Orders**
- 6.1 With respect to orders placed by us for customer-specific Goods to be produced and delivered by the Vendor according to our requirements, the Vendor shall provide us with proofs of the plans which we have to examine and approve for production.
- 6.2 Any changes to the content of contracts for customer-specific Goods – in particular in terms of colour, design, appearance, quantity or delivery date – require a prior written agreement between us and the Vendor. In addition, the following provisions of this clause 6 shall apply in this case.
- 6.3 We are entitled to demand technical alterations to the Goods ordered by us at any time, including during serial production. Immediately after receipt of our alteration request, the Vendor shall provide a cost estimate for any additional costs or reductions of costs as well as information regarding changes in deadlines and effects on weight, function and quality caused by the alterations. The Vendor will keep all costs incurred as a result of our alteration request as low as possible.
- 6.4 The Vendor will carry out the alteration request as soon as it has agreed with us on additional costs or reductions of costs, changes in deadlines and effects on weight, function and quality. An altered proof approved by us has to be submitted by the Vendor also after such an alteration agreement has been made.
- 6.5 Any alterations to the Goods must be marked by the Vendor on the packaging with the article number issued by us.
- 7. Prices and Conditions of Payment**
- 7.1 The price indicated in the order shall be binding. All prices include statutory VAT, unless it is quoted separately. Generally, invoicing by the Vendor must be in euros or in the currency specified in the order.
- 7.2 Unless agreed otherwise in the individual case, the price shall include all services and ancillary services of the Vendor as well as all additional costs (e.g. appropriate packaging, costs of transport, including any potential transport and liability insurances).
- 7.3 The Vendor's invoice is to be submitted separately from the delivery to the "accounting" department in two copies quoting the delivery number. The wording of the invoice must be identical to the order and the invoice must include all relevant data and the number of the respective delivery note. Value added tax is to be quoted separately as a percentage and currency amount.
- 7.4 The agreed price shall be due for payment within 30 calendar days from complete delivery and performance (including an acceptance if agreed) as well as from receipt of a properly issued invoice. In case of the acceptance of premature deliveries or services, the due date will be based on the agreed delivery deadline. In case of a bank transfer, payment shall be deemed effected in due time if the bank receives our transfer order before the expiry of the payment deadline; we cannot be held responsible for any delays caused by the banks involved in the payment process.
- 7.5 There shall be no interest payable from the due date. Default interest shall be 9 percentage points p.a. above the basic interest rate. The occurrence of our default is subject to the relevant provisions of law, although – possibly in deviation from these provisions – a written reminder from the Vendor is required in any case.
- 7.6 We are entitled to offsetting and retention rights as well as to the defence of non-performance of the contract to the extent stipulated by statutory law. In particular, we are entitled to retain due payments as long as we have claims against the Vendor due to incomplete or deficient performance. Any set-off or retention by the Vendor shall only be permissible in case of claims which are *res judicata* or uncontested. Title to the delivered Goods shall pass to us upon handover. Any extended or expanded retention of title by the Vendor shall be excluded.
- 8. Retention of Title**
- 8.1 Any processing, mixing or combination (further processing) of provided objects by the Vendor shall be carried out for us. The same shall apply in case of a further processing of delivered Goods by us, so that we shall be deemed the manufacturer and acquire ownership pursuant to the statutory provisions at the latest upon the further processing of the Goods.
- 8.2 Title to the Goods shall be transferred to us without reservation and irrespective of the payment of the price. If in individual cases, however, we accept an offer by the Vendor to transfer title subject to payment of the purchase price, the Vendor's retention of title shall expire at the latest upon payment of the purchase price for the delivered Goods. We remain entitled to resell the Goods in the ordinary course of business also before

payment of the purchase price, in which case we shall assign the claims resulting from such sale in advance (alternatively, the simple retention of title as well as the retention of title extended to the resale shall apply). All other types of title retention shall thereby be excluded in any case, in particular the expanded and the transferred retention of title as well as the retention of title which extends to the further processing.

## **9. Defective Deliveries**

- 9.1 Our rights regarding defects of the Goods in quality and title (including wrong or short deliveries as well as incorrect installation or defective instructions for installation, operation or use) or regarding other breaches of duties by the Vendor shall be subject to the statutory provision unless agreed otherwise hereinbelow.
- 9.2 Pursuant to the statutory provisions, the Vendor can be held liable in particular if the Goods are not of the agreed quality at the time the risk passes to us. In any case, the respective product descriptions which – in particular through indication or reference in our order – have become part of the respective contract or which were made a part of the contract in the same way as these Purchase Terms shall be considered an agreement regarding the quality of the Goods. It shall be irrelevant in this context whether the product description was provided by us, by the Vendor or by the manufacturer.
- 9.3 By derogation from Sec. 442 para. 1 sent. 2 BGB, we are entitled to claims for defects without limitation even if it was due to gross negligence that the defect remained unknown to us at the time of the conclusion of the contract.
- 9.4 With respect to the business person's duty to inspect and to report defects, the statutory provisions (Secs. 377, 381 of the German Commercial Code (*Handelsgesetzbuch, HGB*)) shall apply with the following proviso: Our duty to inspect shall be limited to such defects which become apparent upon visual check during our incoming goods inspection including the delivery documents as well as during our quality control process using sampling (e.g. transport damage, wrong or short deliveries). An inspection is not required if acceptance has been agreed upon. In all other cases, it depends on whether an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. This shall not affect our duty to report defects discovered at a later stage. In all cases, our complaint (notification of defects) shall be deemed provided without undue delay and in time if it is received by the Vendor within 10 business days.
- 9.5. The expenses incurred by the Vendor for the purposes of examination and subsequent improvement (including any potential costs of de- and reinstallation) shall be borne by the Vendor even if it turned out that there was actually no defect. Our liability for damages in case of unjustified requests for the rectification of defects shall remain unaffected; however, we can only be held liable in this respect if we were aware or, due to gross negligence, were unaware that there was no defect.
- 9.6 Should the Vendor fail to fulfil its duty to provide subsequent performance – at our choice either by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) – within an appropriate deadline set by us, we are entitled to remedy the defect ourselves and to demand compensation from the Vendor for the expenses required in this context and/or to demand

a corresponding advance payment. If the subsequent performance by the Vendor has failed or is unreasonable for us (e.g. due to a particular urgency or where operational safety is at stake or there is an imminent danger of disproportionate losses), there shall be no requirement to set a deadline; we shall inform the Vendor of such circumstances immediately, if possible in advance.

- 9.7 In all other respects, we are entitled to reduce the purchase price or to withdraw from the contract pursuant to the statutory provisions in case of defects in quality or title. In addition, we are entitled to damages and reimbursement of expenses pursuant to the statutory provisions.

## **10. Manufacturer's Liability - Indemnification - Recall - Third-party Liability Insurance**

- 10.1 Where the Vendor is liable for damage caused by the product, it must indemnify us from any claims of third parties insofar as the cause originated in its sphere of control and organisation and if it is liable itself vis-à-vis third parties.
- 10.2 In the context of its duty to indemnify, the Vendor shall provide compensation pursuant to Secs. 683, 670 BGB for expenses incurred due to third party claims including recalls carried out by us. We shall inform the Vendor of the subject matter and extent of recalls – insofar as possible and reasonable – and give him the opportunity to comment. Any further statutory rights shall remain unaffected.
- 10.3 The Vendor undertakes to take out and maintain product liability insurance cover with an amount of coverage of EUR 2.5 million for each event of damage to property and in an unlimited amount for personal injuries; should we be entitled to claim further damages, these claims shall remain unaffected. The Vendor must provide written proof of this insurance cover upon request. Should the Vendor be unable to prove the insurance cover within two weeks, we shall be entitled to take out such insurance cover at the Vendor's expense.

## **11. Secrecy**

- 11.1 We reserve our ownership rights and copyright to all illustrations, drawings, plans, calculations, application instructions, product descriptions and other documents; such documents are to be used exclusively for the performance of the contract and are to be returned to us after completion of the contract. Such documents must not be disclosed to third parties; this shall also apply after the termination of the contract. The secrecy obligation only expires if and insofar as the knowledge contained in the provided documents has become commonly known. The preceding provision shall apply *mutatis mutandis* to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects which we make available to the Vendor for the production. As long as they are not processed, such objects are to be kept separately and must be appropriately insured against destruction and loss at the Vendor's expense.
- 11.2 The parties undertake to treat any non-public business and technical knowledge and information which become known to them through the business relationship as a business secret and not to make such knowledge or information available to third parties. This obligation shall continue to apply for a period of 12 months after the termination of the contract it is based upon.
- 11.3 The obligation in clauses 11.1 and 11.2 shall not apply if and insofar as the Vendor passes on the information exclusively to its employees who must know the information to carry out the order

- ("Authorised Persons"). However, the exception to the obligation in clauses 11.1 and 11.2 shall only apply if these employees are obliged to comply with the secrecy obligation to the same extent as the Vendor, to the extent legally possible, also past the end of the legal relationship by which the employee is bound to the Vendor.
- 11.4 The duties in clauses 11.1 and 11.2 shall not apply to information
- (i) which becomes or has become publicly known without a breach of duty by the Vendor or an Authorised Person;
  - (ii) which the Vendor legally receives or has received from a third party if the third person or the person from whom the third party received the information does not have a secrecy obligation towards us;
  - (iii) which is already known to the Vendor independent of us and without use of the information at the time this secrecy agreement was concluded. This exception to the secrecy obligation shall only apply if the Vendor objects to its secrecy obligation immediately after we disclose the information.
- 11.5 The Vendor undertakes to exercise at least the same duty of care regarding the secrecy of the information that it exercises in its own matters; in any case, however, at least the standard of care required in business.
- 12. Third-party Rights**
- 12.1 The Vendor shall be liable for all claims resulting from infringements of industrial property rights and applications for industrial property rights of third parties (hereinafter "Property Rights") in the Federal Republic of Germany and in the other member states of the European Union in connection with the contractual use of the delivery items or services.
- 12.2 The Vendor shall indemnify us and our customers from all third-party claims based on the infringement of such Property Rights. Any potential licence fees shall be borne by the Vendor.
- 12.3 Clauses 12.1 and 12.2 shall not apply where the Vendor manufactured the delivery item according to drawings, models or equivalent other descriptions or information or rendered services on their basis and where they were submitted by us and it was unable to recognise that Property Rights would be infringed by the products or services developed by it.
- 12.4 The parties undertake to inform each other immediately when risks of infringement or alleged infringements of Property Rights become known to avert any respective liability claims.
- 12.5 If the exploitation of the Goods by us is inevitably connected to the use of a patent or of another industrial property right of the Vendor, the latter shall grant us the non-exclusive and irrevocable right to unrestricted, unlimited use free of charge.
- 13. Limitation of Claims**
- 13.1 The mutual claims of the contractual parties shall become time-barred pursuant to the statutory provisions unless agreed otherwise hereinbelow.
- 13.2 By derogation from Sec. 438 para. 1 no. 3 BGB, the general limitation period for claims resulting from defects shall be 3 years from the passing of risk. If an acceptance is agreed, the limitation period shall commence upon the acceptance. The limitation period of 3 years shall also apply *mutatis mutandis* for claims based on legal defects; the statutory limitation period for real rights of third parties for surrender (Sec. 438 para. 1 no. 1 BGB) shall remain unaffected. In addition, claims based on legal defects shall not become time-barred in any case as long as the third party can still assert the right against us – in particular because it has not become time-barred.
- 13.3 The limitation periods under purchase law including the aforesaid extension shall apply – to the statutory extent – to all contractual claims for defects. Insofar as we are also entitled to non-contractual compensation claims due to a defect, the regular statutory limitation period shall apply (Secs. 195, 199 BGB), unless the application of the limitation rules under purchase law would lead to a longer limitation period in the individual case.
- 14. Choice of Law and Place of Jurisdiction**
- 14.1 These Purchase Terms and all legal relationships between us and the Vendor shall be governed by the law of the Federal Republic of Germany under exclusion of international uniform law, in particular of the UN Convention on Contracts for the International Sale of Goods. The preconditions and effects of the retention of title are subject to the law applicable at the respective location of the object if under that law the agreed choice of German law is inadmissible or ineffective.
- 14.2 If the Vendor is a merchant within the meaning of the HGB, a legal person under public law or a special fund under public law, exclusive – and also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be München (Munich), Germany. We shall nevertheless have the right to file an action at the place of performance of the delivery obligation.

Last updated: January 2017