

I. General provisions

1. These General Terms and Conditions of Purchase of Kessler & Co. GmbH & Co. KG, Hüttlinger Straße 18-20, 73453 Abtsgmünd ("Kessler"), apply to all business relations with our business partners and suppliers ("Supplier").
2. The General Terms and Conditions of Purchase apply in particular to agreements for the sale and/or delivery of movable goods and Software ("Goods" or "Delivery Item"), irrespective of whether the Supplier manufactures the Goods itself or purchases them from other suppliers.
3. Our General Terms and Conditions of Purchase apply exclusively. Any general terms and conditions of the Supplier which deviate therefrom, are contrary hereto or supplementary will only become part of the agreement if we have expressly agreed to their validity. This requirement of an express agreement applies in any case, for example, even if we accept the Supplier's deliveries without reservation having knowledge of the Supplier's general terms and conditions.
4. Any statements and information of legal relevance which the Supplier sends to us after the agreement has been concluded (e.g. deadlines, reminders or formal warnings, declarations of rescission) must be made in text form in order to be valid.

II. Conclusion of agreement and amendments

1. Orders, acceptances of orders, amendments and additions thereto as well as all agreements between us and the Supplier for the purpose of executing the agreement must be in writing. Telecommunication by email or fax is sufficient to comply with the written form requirement.
2. With regard to the quantities and delivery dates stated in the orders, the following release periods apply, based on the order date and subject to a separate agreement:
The quantities for the 1st and 2nd months are ordered with binding effect and released for production. The quantity specifications for the 3rd and 4th months are used by the Supplier for material planning and procurement of the input material (material release), but do not constitute a production release. Quantities indicated in orders after this period (i.e. from the 5th month) are non-binding target figures. After each delivery of the first monthly quota, the quantities and delivery dates for the following two months are binding. Within the framework of our orders, we reserve the right to change dates and quantities according to our actual requirements.
3. Documents from us accompanying the agreement (e.g. illustrations, drawings, calculations and other documents) will in each case become the basis of the agreement and will be binding.
4. The Supplier is obliged to inform us in writing of any necessary permits or notification requirements for importing or operating the Delivery Item. Corresponding documentation (e.g. customs documents) must be handed over to us in good time, no later than upon delivery of the Goods. The Supplier will inform us without undue delay of any changes to the above information or documentation.
5. The legal relationship between Kessler and the Supplier is governed solely by the order and the order confirmation, including these General Terms and Conditions of Purchase. These fully represent all agreements between the contracting parties on the subject of the agreement. Any provisions in our orders take precedence over these General Terms and Conditions of Purchase. Our statements prior to conclusion of the written agreement are legally non-binding and any oral agreements of the contracting parties are replaced by the written agreement, unless it is expressly stated in each case that they continue to be binding.

III. Changes, initial samples and quality management

1. Any change to the Delivery Item by the Supplier requires our prior consent. The Supplier must inform us of planned changes to the Delivery Item in good time and in full so that the impact of the changes can be reviewed. The first delivery after making an approved change to the Delivery Item must be specially marked.
2. The Supplier must carry out an initial sample inspection in the event of any changes to the Delivery Item, new parts, use of new tools or new processes, process changes or relocation of the place of production. Initial samples must be produced under series conditions. For each initial sample we will receive an initial sample inspection report according to VDA including the stamped drawing and acceptance test certificate according to EN 10204 - 3.1. Production of series parts may only commence when the Supplier has received an initial sample release from us. Release of the initial samples by us does not release the Supplier from the obligation to comply with the quality requirements for its Goods. Production parts for initial sample approval are supplied at the agreed series price.
3. To ensure the quality of its deliveries, the Supplier will establish and maintain a quality management system which at least corresponds to the requirements of DIN EN ISO 9001. The Supplier will manufacture and test its products in accordance with the rules of such quality management system. The Supplier is required to maintain DIN EN ISO 9001 certification, which must be renewed regularly, and provide us with proof of such certification on request.

IV. Delivery dates and default

1. The delivery dates stated in the order or otherwise agreed are binding. Receipt of the Goods at the place of destination is definitive for determining compliance with delivery dates. The Supplier is obliged to notify us without undue delay in writing if it is unlikely to be able to comply with agreed delivery dates - for whatever reason. Such notification does not release the Supplier from its obligation to deliver on time. Partial deliveries or early deliveries are only permissible if we approve them in writing in advance.
2. If the agreed delivery time or the agreed delivery date is exceeded for reasons for which the Supplier is responsible, the Supplier will be in default without any prior reminder.
3. If the Supplier is in default with a delivery, we can demand a standard default fee of 1% of the net price of the delayed Goods for each week or part thereof, but not more than a total of 5% of the net price of the Goods delivered late. We are entitled to claim the standard default fee in addition to performance and, as the minimum amount, any damages owed by the Supplier under statutory provisions. We reserve the right to prove that the actual damage suffered was higher, and the Supplier reserves the right to prove that we suffered no damage or only minor damage. The standard default fee will be offset against any further claim for damages.

V. Performance, delivery and transfer of risk

1. Unless otherwise agreed, deliveries will be made DDP (Incoterms 2020) to the place of destination specified by us, including packaging. The place of destination is indicated in the details in the orders or other contractual documents from us.
If the place of destination is not specified and nothing else has been agreed, delivery will be made to our German business address, 73453 Abtsgmünd, Hüttlinger Straße 18-20. The respective place of destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the creditor's place of business [*Bringschuld*]).
2. The Supplier is not entitled to have services owed by it rendered by third parties (e.g. subcontractors) without our prior written consent. The Supplier bears the procurement risk for its services, unless otherwise agreed in an individual case (e.g. limited to available stock).
3. The Supplier is obliged to enclose the corresponding delivery notes with the deliveries. Production batches must be marked and kept separate. Unless otherwise agreed, all Goods must be properly packaged, labelled in accordance with applicable regulations, barcoded where applicable and shipped with due commercial care.
Delivery must be accompanied by information which can be recorded in an automated process and which allows the Goods which have been delivered to be traced.
4. The risk of accidental loss and accidental deterioration of the Goods passes to us upon delivery at the place of performance. If acceptance has been agreed, then acceptance is decisive for the transfer of risk.

VI. Supplier's reservation of title; manufacturer's clause

1. Title to the Goods will be transferred to us unconditionally and irrespective of our payment of the purchase price, subject to the following clauses.
2. If, contrary to clause 1 in an individual case the Supplier has a reservation of title because it was expressly agreed or because the Supplier may be able to enforce a reservation of title in accordance with mandatory law contrary to clause 1, the Supplier's reservation of title ceases to exist at the latest when the purchase price for the respective Goods delivered has been paid.
3. In any event, including the event set forth in clause 2, we are entitled in the due and proper course of business before payment of the purchase price
 - (a) to resell the Goods with advance assignment to the Supplier of our respective purchase price claim herefrom (thus, as an alternative, a simple reservation of title of the Supplier extended to the resale of the Goods applies). All other forms of reservation of title, in particular the extended, forwarded reservation of title and reservation of title extended to further processing, are excluded; and
 - (b) to process, transform, combine, mix and alter Goods subject to the reservation of title of the Supplier. We will always do so for ourselves as manufacturers in our own name and for our own account. At the latest, we at this point acquire title in the Goods in accordance with the respective statutory provisions.

VII. Prices and payment terms

1. The price stated in the order is binding. Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the Supplier (e.g. assembly and installation) and all ancillary costs (e.g. proper packaging, transport costs including transport insurance and liability insurance).
2. The Supplier must issue an invoice for its deliveries and services. If we owe VAT, VAT will not be indicated on the invoice, but reference will be made to the tax liability of the recipient of the service.
3. Unless otherwise agreed, the agreed price is due for payment within 30 calendar days of complete delivery and performance (including any acceptance, if agreed) and receipt of a proper invoice. If we pay within 14 calendar days, the Supplier will grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is deemed to have been made on time if our transfer order is received by our bank before expiry of the payment deadline; we are not responsible for any delays caused by banks involved in the payment process.
4. We will not pay interest on maturity [*Fälligkeitszinsen*]. The statutory provisions apply with regard to default with payment.
5. Excess performance/delivery by the Supplier does not give rise to a claim by the Supplier for acceptance or remuneration for the excess part.
6. All payments are owed exclusively to the Supplier. The Supplier may not assign claims to third parties unless we have expressly consented to such assignment of claims; we may not unreasonably withhold consent.
7. Payments by us do not constitute acknowledgement of proper performance; in this respect, we reserve the right to assert all claims arising from or in connection with performance not provided and/or not provided in accordance with the agreement (e.g. defective performance).
8. We are entitled to rights of set-off and retention and the defence of non-performance of the agreement to the extent provided by law. In particular, we have the right to withhold due payments as long as we have claims against the Supplier arising from incomplete or defective performance.
9. The Supplier only has a right of set-off or retention in respect of claims that have been declared final and absolute by a competent court or that are undisputed by us.
10. Direct taxes (e.g. withholding tax) which have to be levied or paid in Germany on the basis of the remuneration to be paid and/or which has been paid to the Supplier will be borne by the Supplier. If we are obliged under the relevant tax law to withhold and/or pay taxes on contractually owed payments, we may withhold the corresponding tax portion from the invoice amount; this does not apply if, at the latest at the time of payment, the Supplier submits a valid exemption certificate stating that no tax or only a lower tax deduction is levied on the contractual services or the associated remuneration. Upon request, we will issue to the Supplier a corresponding confirmation or provide a tax certificate for taxes paid and deducted from the invoice amount. Default with payment does not apply to withheld taxes within the meaning of this clause 10. Payments do not constitute an acknowledgement that all taxes to be borne by the Supplier have already been deducted from the amount paid. The Supplier will indemnify us against all taxes and other levies to be borne by it in relation to the contractual remuneration.

VIII. Confidentiality

We retain title and copyright to all documents and items (e.g. illustrations, drawings, calculations, models, samples and factory standards) provided to the Supplier for executing the order. Such documents are to be used exclusively to execute our order and must be returned to us upon our request. They may not be disclosed to third parties, even after expiration/termination of the contractual relationship. They may only be made available within the Supplier's own business to those persons who must necessarily be involved in their use for the purpose of delivery of the Goods to us (i.e. need-to-know-basis) and who are also obliged to maintain confidentiality. The confidentiality obligation does not expire until and insofar as the knowledge contained in the documents and items provided has become generally known to the public without the Supplier's fault.

IX. Defective delivery

1. The statutory provisions and, in addition, the following provisions apply in the event that the Goods have material defects or defects of title and in the event of other breaches of duty by the Supplier.
2. The Supplier warrants that the Goods delivered by it comply with the current state of the art, performance characteristics, dimensions, tolerances and surface qualities according to the drawings and samples at the respective current processing status and the other contractual bases, have the customary quality, are of good quality material and workmanship, are free from defects, comply with the applicable statutory and official regulations, in particular the relevant environmental protection, accident prevention and occupational health and safety regulations and are suitable for the intended use.
3. If Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 ("REACH Regulation"), as amended from time to time, applies to the Delivery Item, the Supplier warrants that the Delivery Item complies with the requirements of the REACH Regulation (including registration). If claims are made against us by third parties, including public authorities, due to non-compliance with the REACH Regulation, the Supplier is obliged to indemnify us against such claims. The Supplier is obliged to inform us without undue delay and without being asked of any changes to the REACH standards for the Delivery Item (e.g. updated safety data sheet).
4. The statutory provisions (sections 377, 381 German Commercial Code (*HGB*)) apply with respect to our commercial duty to inspect the Goods and notify defects, subject to the following provisions: (i) We will only inspect delivered Goods with regard to quantity, identity and externally visible transport damage; we will notify the Supplier without undue delay of any defects found in this process. (ii) We will notify the Supplier without undue delay of any other defects in the delivered Goods as soon as they are discovered in the ordinary course of business. Our notice of defects will in any case be deemed to be without undue delay and timely if it is sent within 8 working days from delivery of the Goods (in the case of obvious defects within the meaning of sentence 1 – (i)) or from discovery (in the case of hidden defects within the meaning of sentence 2 – (ii)).
5. Running/expiry of the limitation period for warranty claims is suspended upon Supplier's receipt of the written notice of a defect and will continue to be suspended until the Supplier rejects the claims or declares the defect remedied or otherwise refuses to continue negotiations with us regarding the claims.
6. In the event of defective Goods, we are entitled to choose the type of subsequent performance, in particular we may demand delivery of defect-free Goods without undue delay. The Supplier will provide any statements requested by us regarding defective Goods within 10 working days, preferably in the form of an 8D report. If we accept the Goods with reservations despite their defective nature, this does not release the Supplier from its warranty obligations or liability obligations.
7. If the Supplier does not fulfil its obligation of subsequent performance - at our discretion by repairing the defect (repair) or by delivering a defect-free item (replacement) - within a reasonable period set by us then we may remedy the defect ourselves and demand reimbursement from the Supplier for the expenses required for this purpose.
If subsequent performance by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, danger to operational safety or impending occurrence of disproportionate damage), it is not necessary to set a deadline; we will inform the Supplier of such circumstances without undue delay, if possible in advance.

8. Furthermore, in the event of a material defect or defect of title, we are entitled to reduce the purchase price or to rescind the agreement in accordance with the statutory provisions. In addition, we are entitled to claims for damages and reimbursement of expenses in accordance with the statutory provisions.
9. Defective, non-usable Goods will be kept available for the Supplier for 20 days from receipt of the notice of defect to Supplier. If within this period there is no request to the contrary from the Supplier, we are entitled to return the Goods free of charge (for us) to the Supplier or scrap them.
10. The warranty period for replaced and rectified Goods will begin anew in the event of repair or replacement.
11. If the Supplier purchases something (e.g. parts) from third parties to manufacture the Goods to be delivered or for the delivery itself, it is obliged to inspect incoming parts to ensure compliance with the product specifications of the purchased parts. If parts purchased by the Supplier are used for its production, the Supplier is obliged to carry out a subsequent inspection after the purchased parts have been used.
12. If a reject rate of 1% (for any 6 months period) is exceeded for raw material deliveries for cast and forged parts, the Supplier bears the processing costs incurred by Kessler. In addition, we may assert all other contractual rights (pursuant to this clause IX) and statutory warranty rights, in particular also regarding damages.

X. IP rights

Without prejudice to our further rights and claims under these General Terms and Conditions of Purchase, the following applies to use of intellectual property rights with regard to the Delivery Item (product incl. related accompanying documents and additional materials) delivered to us by the Supplier with regard to intellectual property rights and intangible property rights:

1. To all intellectual property rights and intangible property rights of any kind whatsoever (in particular know-how, copyrights, software, ancillary copyrights, patents, utility model and design rights, registered designs, trademark rights), we receive a non-exclusive, but unlimited with respect to territory (worldwide), content and time, irrevocable right of use (Licence) for the use intended by the contractual purpose of the Delivery Item in each case upon delivery. The Licence includes the right to transfer the rights of use granted and the right to grant sub-licences. This also includes any processing rights that may be required for contractual use. For the purposes of contractual use, we are simultaneously granted the right of (first) publication.
2. The Supplier represents and warrants that we are entitled, but not obliged, to name suppliers and provide other source information/references in connection with the licensed use of the Delivery Item.
3. The Supplier warrants that it is fully authorised to dispose of the rights of use required for the contractual purpose and to procure the Delivery Item free of third-party rights; the warranty also includes that use of the Delivery Item in accordance with the Licence is not subject to any further conditions by third parties which are binding on us and that use of the Delivery Item in accordance with the agreement does not result in any infringement of applicable law.
4. If, in deviation from clause 3 above, further conditions that are binding on us are to be agreed for the licensed use of the Delivery Item, which requires an express written agreement with us, the Supplier is obliged to provide us with all conditions in this respect, together with any relevant documentation, at least in text form in advance. For software, this includes, without prejudice to further information relevant to the conditions, the specific software version and the specifically relevant licence conditions.
5. The Supplier undertakes to indemnify us against all claims of third parties in connection with the Delivery Item. Indemnification also covers claims asserted against us by employees or contractual partners of our Supplier for further participation as author, in particular pursuant to section 32a German Act on Copyright and Related Rights (*UrhG*) Indemnification also covers such reasonable expenses which we incur as a result of the fact that - in order to produce a lawful condition - at our discretion, and without us being obliged to do so in relation to the Supplier, either a licence is acquired from the third party or a condition of the Delivery Item which is no longer in breach of the law is produced through a modification. Further claims and rights on our part remain unaffected.

XI. Tools and property held in trust

1. All supplies, materials, tools, devices, dies, gauges, receptacles, moulds, models, equipment and other items ("Tools") which we make available to the Supplier either directly or indirectly for the execution of our orders remain our property.
2. If the Supplier acquires the Tool or manufactures it at our expense, it is already agreed now that ownership of the Tool passes to us after payment.
3. The Supplier undertakes to keep the Tools free of charge, to use them exclusively for the execution of our orders, to treat them with care, to mark them as our property and to insure them at its own expense against fire, damage and theft and to carry out any necessary maintenance, inspection and repair work in good time and at its own expense. The Supplier may not pass the Tools to third parties or use them as security, in particular it may not transfer ownership by way of security or pledge them.
4. The Supplier must notify us if a Tool has been exhausted or depleted. We will determine the further use of the Tool. With respect to follow-up Tools which have already been factored into the agreed prices by the Supplier, the new production, repair or the like will be carried out in good time by the Supplier at its own expense.

XII. Right of inspection and examination

If required, the Supplier will grant us or a person authorised by us in this respect access to its business premises and its production documents and inspection documents on the agreed date during normal business hours, insofar as necessary and appropriate for performance of the agreement.

XIII. Termination and rescission

1. In the event of good cause, in particular if the Supplier is in breach of the agreement, in the event of a significant deterioration in the Supplier's financial circumstances, illiquidity or over-indebtedness, we reserve the right to rescind the agreement in whole or in part or to terminate the agreement without notice. This has no effect on any further-reaching statutory claims we may have.
2. In the event of termination or rescission from the agreement pursuant to clause XIII.1. above, we will remunerate the contractual services already demonstrably rendered by the Supplier up to the time of termination or rescission from the agreement against submission of the respective Goods and the relevant receipts. Payments already made by us will be credited against the remuneration or refunded in the event of overpayments.

XIV. Limitation period

1. Unless otherwise stipulated below, claims will become statute-barred in accordance with the statutory provisions.
2. Notwithstanding section 438 (1) no 3 German Civil Code (*BGB*), the general limitation period for claims based on defects is three years from transfer of risk. If the parties agreed on an acceptance, the limitation period begins after our acceptance of the Goods. The three-year limitation period also applies accordingly to claims arising from defects of title, whereby the statutory limitation period for claims for return based on property rights of third parties (section 438 (1) no. 1 German Civil Code (*BGB*)) remains unaffected; claims arising from defects of title will furthermore not become statute-barred in any case as long as the third party can still assert the right for return against us - in particular if the third party's rights are not statute-barred.
3. The limitation periods of German law on sales contracts including the above-mentioned extension apply to all contractual claims for defects to the extent provided by law. If we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (sections 195, 199 German Civil Code (*BGB*)) applies to this, unless application of the limitation periods of German law on sales contracts leads to a longer limitation period in the respective individual case.

XV. Insurance

The Supplier is obliged to maintain at its own expense product liability insurance at the customary market conditions with a coverage amount of at least EUR 2 million per physical injury or property damage and provide us proof of such insurance on request.

XVI. Choice of law, place of jurisdiction, severability clause

1. These General Terms and Conditions of Purchase and all contractual and non-contractual legal relationships between us and the Supplier are governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Exclusive place of jurisdiction for any disputes arising from or in connection with the contractual relationship is our place of business in Abtsgmünd. However, we also have the right to bring action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Purchase or a prevailing individual agreement or at the Supplier's general place of jurisdiction. This provision has no effect on overriding statutory provisions, in particular on places of sole jurisdiction.
3. If individual provisions of these General Terms and Conditions of Purchase are invalid or unenforceable or the General Terms and Conditions of Purchase contain unintended omissions, these General Terms and Conditions of Purchase and the agreement based thereon will remain valid in all other respects. If these General Terms and Conditions of Purchase contain unintended omissions, those legally effective provisions which the contracting parties would have agreed in accordance with the economic objectives of the agreement and the purpose of these General Terms and Conditions of Purchase, had they known about the omission, will be deemed to have been agreed in order to fill the contractual omission.

XVII. Provisions for commissioned software programming (and associated work results)

If we commission the Supplier to create software, the following provisions apply in addition to the above General Terms and Conditions of Purchase; in the event of contradictions between provisions below and the above provisions (Section I. - XVI. General Terms and Conditions of Purchase), the following provisions will take precedence:

1. Unless expressly agreed otherwise in writing, the Supplier is obliged to make the commissioned software available to us on a physical data carrier at our place of business.
2. In addition to the object code, delivery of the software also includes provision of the source code and comprehensive documentation of the software programming carried out (collectively the "Software"), in each case in electronically readable form.
3. Unless expressly agreed otherwise in writing, the Supplier grants us, upon delivery of the Software, an exclusive right of use ("Licence") for all types of use known and arising in the future, unlimited in terms of content, time and territory (worldwide). The Licence is transferable in whole or in part and entitles the holder to grant sub-licences. At the same time, it includes all exploitation rights possible under sections 69a-g German Act on Copyright and Related Rights (*UrhG*).
4. The Licence includes in particular the following rights:
 - the right of reproduction irrespective of the respective chosen reproduction medium (e.g. print medium, VideoGram, CD-ROM, DVD, hard disk) and the reproduction technique selected. The granting of rights extends to both permanent and temporary acts of reproduction in analogue and digital form. It also includes the right to store and archive in and reproduce from databases or other IT-supported programmes.
 - the right to distribute the Software in the original and in the form of reproductions in any form (including rental), irrespective of whether or not commercial purposes are pursued through distribution.
 - the right to publicly reproduce the Software by wire or wireless means. This right includes, in particular, the right of performance, the right of presentation, the right of making available to the public, the right of broadcasting by means of radio, television or satellite as well as the right of reproduction by means of other data carriers and audio-visual image carriers and sound carriers.
 - the right to make the Software available to users by means of digital or other storage or data transmission technology, with or without intermediate storage, in such a way that they can access the Software from a place and at a time individually chosen by them and store or download or play it by means of TV, PC, e-book, mobile phone, smartphone, tablet or other devices by wire or wireless, e.g. via the internet, intranet, UMTS/LTE/5G, cable, satellite or other transmission routes, including interactive use of the Software (electronic online right).
 - the right to edit, shorten, extend, combine with or link to other software or IP/IT components or otherwise modify the Software according to one's own ideas or through third parties, to carry out translations, to implement or integrate in new or other software programming, to change the arrangement or to carry out other modifications (including the right to exploit the results thus obtained in any form according to the types of use granted in the Licence).
5. The Licence is not tied to the use of the Software in relation to a specific product; any mention of such a product in connection with commissioning does not constitute a licence restriction in this respect.
6. We are under no obligation to use the Software.
7. The provisions pursuant to Section XVII. also apply accordingly to commissioning a Supplier with regard to Software modifications/changes with a view to the changes, modifications and/or other processing carried out by the Supplier as well as to other software which the Supplier provides to us within the scope of subsequent fulfilment, in the case of updates, bug fixes or upgrades.