Terms and Conditions of Purchase

of KULLEN–KOTI GmbH, Reutlingen

Kullen
KOTI GROUP
Brushing Solutions

§ 1 Scope of application

1. Our General Terms and Conditions of Purchase apply to all services we purchase in all our fields of activity. Hence these General Terms and Conditions of Purchase apply to the purchase of goods, to the commissioning of work and to the commissioning of services.
2. They also apply to all future business and to all business communications with the Provider of Services, for example when commencing contract negotiations or initiating a contract, even if they are not explicitly agreed again and even if no explicit attention is again drawn to them again.
3. We do not recognise conditions of the Provider of Services that deviate from or are in conflict with our Terms and Conditions of Purchase. The validity of general terms and conditions of business of the Provider of Services is hereby expressly rejected.
4. Previous agreements and earlier versions of our Terms and Conditions of Purchase are rendered invalid by these Terms and Conditions of Purchase.
5. Performing the ordered delivery/service and charging for the agreed remuneration are considered an acknowledgement of these Terms and Conditions of Purchase.

§ 2 Conclusion of the contract

1. We issue our orders, amended orders and delivery schedules in writing, through remote data transmission, by fax or by e-mail. The content of verbal agreements and agreements made by telephone (discussions) is, if there is any doubt, only binding if it has been confirmed by us in writing. Every order, amended order and every delivery schedule must be confirmed immediately in writing by the Provider of Services. If this confirmation is not dispatched within seven working days of receipt of our order or amended order, or if our order is not accepted within a period of seven working days, then we are no longer bound by the order and entitled to withdraw from the contract. Delivery schedules become binding if the Provider of Services does not object to them within seven working days of receipt.
2. Order documents, in particular attached drawings or sketches, remain our property. The Provider of Services is obliged to state the company abbreviation specified in our non-binding enquiry or in our written order in all correspondence that arises. To be stated in every instance are our order or job number, our article number, if already issued by us, and the name of the contact person in our company.
3. Any reference to business relationships with us in advertising materials or reference documents or the use of trade marks which we have the right to use requires our prior written consent.
4. The quotations or cost estimates passed to us by the Provider of Services are binding. They are to be prepared free of charge by the Provider of Services.

§ 3 Scope of services

1. The Provider of Services is obliged to make the delivery ordered by us/render the service ordered by us in accordance with the contractual agreements. Deviations from this are only permitted with our written consent. The Provider of Services is responsible for ensuring that the delivery is made/the service is rendered using suitable materials and corresponds to the recognised codes of practice, the statutory and official safety regulations and the environmental protection regulations which constitute applicable law or have already been passed with a transition period and are certain to enter into force.
2. If we order parts which the Provider of Services produces using a drawing or sketch we have specified or in accordance with a model, then it must at our request, together with the delivery of the goods or services, submit a test report from which the product characteristics such as dimensions etc. are apparent. With initial samples, an initial sample inspection report must be supplied free of charge.
3. If the Provider of Services makes changes to the nature of the composition of the material processed or to the structural design of its products or services compared with deliveries of the same type or services of the same type performed for us in the past, it is obliged to notify us of this fact immediately. As a fundamental principle, changes require our approval.
4. The Provider of Services must execute the orders assigned to it at its own company. Passing on orders to third parties requires our written approval. If our contract with the Provider of Services involves consultancy services or other services which in terms of their content have the personal rendering of services by a particular person as the basis for the contract, then the Provider of Services is obliged to have the services rendered personally by the particular person.
5. If we commission the Provider of Services to render services of an intangible nature, e.g. design, consultancy or programming services, then with the handover or fulfilment of the contractual obligation we acquire the exclusive right of use, unlimited geographically and in terms of time, to the services performed. Inventions in connection with the service provision must be communicated to us; the exclusive rights to these inventions must be transferred to us. Individual rights of inventors remain unaffected.
6. If we commission the Provider of Services to provide services protected by copyright, then it shall grant us an exclusive, global right of use, which is unlimited in time, geographically and in terms of content and is transferable, to the protected service. The right of use comprises the right to duplicate the work in tangible form, to circulate it, to exhibit it, to transfer to image and audio media and also to reproduce the work publicly in intangible form and to make it publicly accessible. Here the granting of rights of use comprises in particular the right

6.1 to duplicate and circulate the work in print media (e.g. in advertising leaflets, business cards, company brochures, business correspondence, newspapers, journals, magazines, brochures, books, and on posters and signs),

6.2 to store, duplicate and circulate the work on audio or data storage media (e. g. magnetic, optical, magneto-optical and electronic carrier media such as CD-ROM, CD-i and other CD derivatives, DVD, floppy discs, hard disks, RAM, microfilm, video cassettes), irrespective of the transfer, carrier and storage techniques;

6.3 to make the work available to the public by wired or wireless means using digital or analogue electronic distribution irrespective of the technology used in the process, via telecommunications and data networks of all types (e. g. online services, Internet, intranet, cable systems, satellite systems, via mobile services such as mobile phone, WAP services, teletext or navigation systems) including the right to allow the users to download

6.4 to reproduce the work publicly, in particular to exhibit it publicly

6.5 to produce photographs and to record the work on video or other film media, and to duplicate and circulate and make publicly accessible and reproduce publicly photographs and recordings produced in this way in accordance with Clauses 7.1 to 7.7

6.6 to use the work in types of usage that are not yet known,

6.7 to transfer all rights of use, singly or in full, to third parties or to grant third parties rights of use to the work. The Provider of Services hereby agrees to the transfer of the rights of use to third parties.

§ 4 Models, tools, drawings, sketches, logo

1. If we allow the Provider of Services to use, in the context of a delivery/service, models, samples, production facilities, tools, measuring and testing equipment, drawings, works standard sheets, printing templates or other materials to be supplied, then these remain our property. They shall be stored by the Provider of Services with the due care of a diligent businessman, free of charge and separately from other items in its possession; they shall be labelled as our property and used by the Provider of Services only for carrying out our delivery/service. The models and tools made available to the Provider of Services must be insured by the latter against disasters such as fire, water, theft and loss at its own expense.
2. The Provider of Services is hereby made aware of the fact that drawings and sketches may be protected by copyright and our logos may be protected by trademark. The Provider of Services therefore undertakes not to pass our logo, the drawings or sketches or data, or the tools and models produced on the basis thereof, to third parties without our prior written approval and undertakes not to use them for any purpose beyond the scope of the contract. For every instance of culpable infringement of copyrighted rights of use or trademark rights to which we are entitled, we have the right to claim a flat-rate damage compensation fee of EUR 10,000,-- (in words: ten thousand euros); the Provider of Services is free to provide proof that we have not suffered any damage, or the damage has suffered has been less than this. If proof is successfully provided, a right to compensation exists only for the damage actually incurred. We reserve the right, instead of the flat-rate damage compensation fee or in addition to this, to assert a claim for a demonstrably greater level of damage.
3. The Provider of Services shall, with the rendering of its service or dispatch of its delivery, transfer to us all the production facilities, tools and models tied to the order and produced by it at our expense. We accept the transfer. If these remain with the Provider of Services, the transfer is replaced by the production facilities and tools being left with the Provider of Services on a loaned basis for execution of the order.
4. Insofar as the Provider of Services, on our behalf and with our assistance - e.g. by us providing models, drawings etc. - produces goods, the goods of the relevant type may solely be produced for us and delivered and sold to us.

§ 5 Payment terms

1. Payment periods commence from the specified date of delivery or service, at the earliest from the date the goods are received or the service is rendered in full, the acceptance thereof - as far as agreed or provided for by law - and correct invoicing. If the issue of additional attestations or material test certificates has been agreed, then the payment periods do not commence until these documents have been received. These documents form a key part of the delivery; they must be submitted five days after receipt of the goods or invoice at the latest.
2. If the parties have not agreed anything else, the Provider of Services shall guarantee a 3 % discount on payments made within 14 days of the goods being received, otherwise payment shall be made net within 45 days. Should defects in the delivery arise or have been discovered within this period, we have a right of retention and the claim of the Provider of Services does not become due until there has been final rectification of the defects and/or a replacement, defect-free delivery has been made. In this case, too, we are entitled to a discount.
3. We have the right to make payments by cheque or discountable bills of exchange for which the discount charges and taxes shall be borne by the Provider of Services.
4. Paying an invoice does not constitute a waiver in respect of notifications of defects. In the event of a faulty delivery we are entitled to retain a proportion of the payment until correct fulfilment has taken place.
5. Otherwise, we are entitled to rights of offset and retention as defined by law.
6. The Provider of Services is not entitled to assign to third parties its claims for payments of its remuneration without our prior written approval. We will not unreasonably withhold this approval.

§ 6 Prices, shipping, packaging, delivery

1. Fundamentally, the agreed prices are fixed prices. If no prices are given in the order, then the list prices of the Provider of Services with the customary discounts shall apply. If the Provider of Services reduces the prices of the ordered products prior to delivery, then the reduced prices apply. If nothing else has been agreed, the shipping of goods shall as a fundamental principle take place on a ‘carried and insurance paid’ basis for inland deliveries: CIP (Incoterms 2010) or, delivered from abroad, insured and duty paid: DDP (Incoterms 2010) to our specified delivery address.

2. Packaging

2.1 Packaging costs shall be borne by the Provider of Services.

2.2 The supplier must take away transport and outer packaging and dispose of this at its own expense, unless agreements to the contrary have been made.

2.3 Pallet goods

- Pallet types

Europallets in accordance with DIN 15 146 with the basic dimensions
L x B = 1,200 mm x 800 mm or industrial pallets according to DIN with the basic dimensions
L x B = 1,200 mm x 1,200 mm are to be used.
Disposable pallets are only permitted with written consent.

- Pallet overhang

The goods must not overhang the pallets by more than 30 mm on all sides.

- Pallet height (pallet incl. goods) is permitted as follows

Height 1 = 700 mm
Height 2 = 1,200 mm
Height 3 = 1,800 mm
The maximum height of 1,800 mm must not be exceeded.

- Pallet weights

The maximum permitted weight per pallet is 1,000 kg.

2.4 Small parts
We are entitled, when ordering small parts, to demand the use of the standardised containers customary at our company. The dimensions of the standardised containers shall be communicated by us in each case. Where standardised containers are used, our Purchasing/Logistics department will define further details such as how to deal with the empty containers/standard fill quantity/standard containers for each article/accompanying papers separately.

3. All deliveries must be accompanied by packing slips; the relevant shipping documents must be sent on the day the goods are dispatched. Full order and article numbers must be stated on dispatch notes, consignment notes, package addresses, delivery notes and invoices. The VAT No. of the Provider of Services must be visible. Invoices must contain invoice numbers. Deliveries without sufficient accompanying papers shall, in terms of processing and payment, be set aside until clarification is provided, and until they have been rectified by the Provider of Services shall be stored at our premises solely at its expense and risk. Solely the Provider of Services is liable for damage and costs arising from inadequate observance of or non-compliance with these conditions.

§ 7 Delivery and service periods

1. Agreed dates and deadlines are binding. The definitive date for adherence to the delivery date or the service deadline is the date of receipt of the goods or the rendering of the service at our premises. The Provider of Services is obliged to inform us immediately in writing if circumstances occur or become apparent from which it emerges that the agreed delivery or service period cannot be adhered to. Provision of this notification does not exempt the Provider of Services from its liability due to default.
2. The Provider of Services may only invoke the lack of requisite documents to be supplied by us, or information or materials to be provided us, as a hindrance to providing a service if it has sent a reminder about the transfer of the documents, information and materials to us in writing and - insofar as handing these over is our responsibility - has not received them within an appropriate time period.
3. Deliveries made early do not affect the agreed payment due date. Partial deliveries shall only be accepted after this has been expressly agreed. The partial delivery that remains must be specified in the delivery documents. If partial deliveries have not been agreed, than the agreed payment due date is calculated from the day of complete delivery at the earliest.
4. Even if no reminder has been given, the Provider of Services is in default in delivery as soon as the binding delivery date agreed in each case is exceeded.
5. If the Provider of Services fails to meet the contractually agreed delivery deadline, then for each working day of culpable failure to meet the deadline it must pay a contractual penalty corresponding to 0.2 % of the delivery price (without VAT), in total, however, a maximum of 5 % of the delivery price. A contractual penalty incurred may be enforced until the time of final payment.
6. If the delay in delivery is the fault of the Provider of Services, then the latter shall bear unlimited liability for all damage suffered by us as a result of the delayed delivery; the incurred contractual penalty shall be credited against the damage caused by default.
7. Acceptance of a delivery does not constitute a waiver in respect of damage compensation claims resulting from default in delivery.

§ 8 Warranty for defects, limitation period, liability

1. We accept delivered goods subject to examination to check they are free from defects. We satisfy our obligations to inspect and provide notification of defects in accordance with § 377 German Commercial Code regarding obvious defects in the delivery/service if we dispatch a complaint within 20 working days of our receiving the delivery. If, based on the ordinary course of business, examining the delivery within this period is not doable, we shall report obvious defects to the Provider of Services immediately following the examination and the identification of the defect. In this respect the Provider of Services waives its objection to delayed notification of defects.
2. If the delivery/service of the Provider of Services has material defects, then we are entitled to assert statutory claims on the basis of defects within 36 months of the transfer of risk. If the law provides for longer limitation periods for claims for defects for certain items or rights acquired by us or for products that we produce using delivered items, then these longer periods shall be deemed agreed also in relation to the Provider of Services.
3. If we have a statutory right to supplementary performance, then the Provider of Services must, according to what we decide, either remove the defect or deliver a defect-free item.
4. If the supplementary performance is unsuccessful or if the Provider of Services refuses to carry out the selected type of supplementary performance, then we can withdraw from the contract, reduce the claim for remuneration that exists against us or, if the Provider of Services does not provide proof that it had no culpability regarding the defects, assert a claim for damage in place of performance. The same applies if we cannot reasonably have the Provider of Services carry out the supplementary performance. This is particularly the case if the Provider of Services, despite being requested to remove the defect, does not fulfil its obligation immediately and there is the risk of acute dangers or major losses. In these cases we are also entitled to carry out the work to remove the defect ourselves or have this carried out by a third party at the expense of the Provider of Services. This particularly applies if major losses – particularly claims from our customer owing to default – can only be avoided if the defect is rectified by us or by a third party commissioned by us. We shall inform the Provider of Services about this. Other statutory rights - e.g. Claims for reimbursement of expenses - remain unaffected.
5. The limitation periods shall be suspended for the duration of the attempts at supplementary performance by the Provider of Services. Suspension of the limitation periods starts from the date on which we provide notification of defects. Suspension of the limitation period only ends on the date when the delivered item is usable in a defect-free state. For parts that are newly delivered within the limitation period as part of the warranty for defects, the limitation period restarts on the date on which the Provider of Services has completely satisfied our claims relating to redelivery, unless we had to assume based on the behaviour of the Provider of Services that the latter did not regard itself as being obliged to take the measure but rather made the replacement delivery or rectified the defect as a gesture of goodwill or for similar reasons.
6. If we take back the item sold to our customers as a consequence of defectiveness that was caused by a delivery/service from the Provider of Services, or if our customer reduces the agreed payment, then we are entitled to the rights laid down in § 437 German Civil Code with respect to the Provider of Services, without this requiring a deadline to be set.
7. If a material defect becomes apparent within six months of the transfer of risk, it shall be assumed that the item was already defective at the point of transfer of risk, unless this supposition is inconsistent with the type of item of defect.
8. If the service/delivery we receive from the Provider of Services has defects of title, then the Provider of Services shall release us from potential claims of third parties unless the Provider of Services is not responsible for the defect of title.
9. If claims are made against us owing to the infringement of national or foreign or official safety regulations, or product liability regulations, or owing to defects in our products that can be attributable to deliveries or services from the Provider of Services, then we

can demand compensation from the Provider of Services for the damage caused by its products and a release from corresponding claims of third parties. In cases of fault-based liability, however, this only applies if the Provider of Services is at fault. If the cause of the damage falls within the sphere of responsibility of the Provider of Services, it shall bear the burden of proof in this respect.

10. The costs to be reimbursed also cover the costs of any product recall that becomes necessary, as well as the necessary costs for prosecution. The Provider of Services shall be informed about the content and scope of the product recall to be implemented. The Provider of Services is obliged to take out producer's liability insurance to cover its obligations resulting from its liability as a producer of the delivered items.

§ 9 Rights of withdrawal in the case of force majeure

1. If, as a result of force majeure events, industrial disputes, interruptions to operations for which we are not responsible, unrest, official measures or other unavoidable events which occur after conclusion of the contract, our requirement for the ordered goods drops to a significant degree through no fault of our own, then we may withdraw from the contract either in part or in full, or request its execution at a later date, without the Provider of Services being entitled to make claims against us as a result, as long as the events described are of a significant duration.

§ 10 Acceptance

1. If, within the context of the particular order, we are required to accept the service, then if the service is rendered in accordance with the contract, we shall declare in writing that the contractual services of the Provider of Services have been performed.
2. If we do not declare our acceptance on time, the Provider of Services may set us a further, appropriate deadline by which to submit our declaration. Once this deadline expires the service shall be deemed accepted, if we neither declare the acceptance in writing nor outline in writing which defects are still to be removed. The Provider of Services shall draw our attention to this legal consequence when setting the deadline.
3. There is no right to have partial acceptances carried out.

§ 11 Property rights

1. The Provider of Services is liable for ensuring that no rights of third parties are infringed in connection with its delivery/service, unless it is not responsible for the infringement of the rights.
2. If a third party makes a claim against us on the basis of an alleged infringement of property rights, then the Provider of Services is obliged to release us from these claims, unless it is not responsible for the property right infringement. The obligation to release relates to all expenses necessarily incurred as a result of or in connection with the claims made by a third party.
3. If the Provider of Services already holds property rights to the ordered deliveries or services or to processes for their production, these must be communicated to us on request giving the relevant register number; we acquire a free, non-exclusive right of use that is unlimited in time.

§ 12 Spare parts, price guarantee for the first three years after termination of series production

1. The Provider of Services undertakes to supply spare parts for delivered items for the period of anticipated technical use of these delivered items, as a minimum, however, for a period of fifteen years after delivery, at appropriate prices and in accordance with the conditions of the underlying order. In the first three years after the series production of the delivered items has ended, either in general or with respect to us, the Provider of Services must keep us supplied at the prices most recently applicable during series production.
2. If the Provider of Services stops supplying spare parts after the expiry of this period of fifteen years, then it must inform us of this immediately and grant us the possibility of placing one last order. If no agreement is reached on the conditions or the price, or if the Provider of Services stops supplying spare parts without notifying us of this, it is obliged to pass us the documents necessary for producing the spare parts immediately upon request. We have the right to use the documents free of charge.

§ 13 CE declaration of conformity / manufacturer's declaration/certificates

Delivered items must fulfil all the regulations, guidelines and standards relating to the particular goods and be supplied with the stipulated certificates and confirmations. Should a manufacturer's declaration or a declaration of conformity (CE) be required for the goods, the Provider of Services must prepare this and on request make it available at its own expense.

§ 14 Confidentiality

1. We and the Provider of Services ("the parties") undertake, during the term of the contract, to keep confidential all information that becomes available to them in connection with the contract which is termed confidential or on the basis of other factors is recognisable as trade or company secrets, above all technical and commercial information, and – unless explicitly approved beforehand in writing or offered for the purpose of achieving the purpose of the contract – neither to record this nor pass it to third parties nor exploit it in any way. This confidentiality obligation remains for five further years after complete fulfilment or termination of the contract.
2. This does not apply to information,

2.1. which was already known to a party prior to the start of contract negotiations or which was shared by third parties as non-confidential information, provided the latter are not, for their part, contravening confidentiality obligations;

2.2. which the parties have developed independently of each other in each case;

2.3. which are or become publicly known through no fault or intervention of the parties or;

2.4. which must be disclosed owing to legal obligations or due to an official or court order.

In the latter case, the disclosing party must immediately inform the other party before disclosure. If the Provider of Services invokes one of the above exceptions, then it has the burden of proof. Other statutory obligations regarding confidentiality remain unaffected.

§ 15 Final provisions: Place of fulfilment, place of jurisdiction, applicable law, data processing, language of the contract, severability clause

1. The place of fulfilment is Reutlingen.
2. The sole place of jurisdiction for all disputes between the parties arising from the contractual relationship is Tübingen, insofar as the Provider of Services is a businessman, legal entity under public law or a special fund under public law or the Provider of Services

does not have a general place of jurisdiction in the Federal Republic of Germany or moves its place of jurisdiction abroad. By way of an exception to this we are also entitled to make a claim against the Provider of Services in its general place of jurisdiction.
A businessman is any entrepreneur who is registered in the commercial register or who runs a commercial enterprise and requires a commercially organised business operation. The general place of jurisdiction of the Provider of Services is abroad if their registered office is abroad.

3. Should a provision in these Terms and Conditions of Purchase or a provision in the context of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.
4. The Provider of Services is aware that data from the business transactions, including personal data, has to be stored and – where necessary for business purposes – processed and passed to third parties. The Provider of Services agrees to this data collection and processing.
5. The language of the contract is German. If the parties additionally use another language, the German wording in accordance with the agreement takes priority.
6. The contractual and other legal relationships with the Provider of Services are governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).