

PURCHASING CONDITIONS OF RK KUTTING GMBH

(STATUS: 27th MARCH 2023)

For application in relation to:

- a) Any party pursuing his/its commercial or freelance business for purposes of negotiating the Agreement (Contractor);
 - b) A legal entity under public law or a public legal special fund.
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1. APPLICATION OF PURCHASING CONDITIONS OF RK KUTTING GMBH

- a) The Purchasing Conditions of RK Kutting GmbH, Egerten 9, 74388 Talheim apply with exclusive effect unless expressly agreed otherwise, in writing.
- b) Any supply conditions that run counter to (or differ from) these Purchasing Conditions are hereby contested in advance unless their application has been approved in writing by RK Kutting GmbH.
- c) The fact of fulfilling the order from RK Kutting GmbH will stand as effective recognition of these Purchasing Conditions for this order and for all subsequent orders, even if reference is made to the Supplier's terms in a confirmation of order, in a delivery note, in an invoice or in a letter from the Supplier (or in any other way).
- d) The Purchasing Conditions of RK Kutting GmbH will still apply even if the Agreement with the Supplier is executed without reservations in the knowledge of the Supplier's conditions having contrary effect or differing from the Purchasing Conditions of RK Kutting GmbH.
- e) These Purchasing Conditions also apply to all future transactions with the Supplier.

2. ORDER AND ORDER CONFIRMATION; AMENDMENT OF AGREEMENT

- a) RK Kutting GmbH may revoke the order if the Contractor has not accepted it in writing within a timeframe of 2 weeks after receiving it (order confirmation).
- b) If the order confirmation differs from the order, then RK Kutting GmbH is bound by it only if RK Kutting GmbH has given written approval for the deviation.
- c) Changes and supplements to the order will be effective only if they have been confirmed in writing by RK Kutting GmbH.
- d) RK Kutting GmbH may require changes in the supplied item even after the negotiation of contract, provided that this is reasonable for the Supplier. In the context of such a contractual change, reasonable account must be taken of the repercussions on both sides, especially additional or reduced costs and delivery timeframes.

3. DELIVERY PERIOD

- a) The delivery period indicated on the order is binding. The promptness of deliveries is defined by the time of arrival at the destination address stipulated by RK Kutting GmbH, whilst the promptness of deliveries including installation or assembly, and services, will be defined according to their time/date of receipt.
- b) If any delivery or agreed part-delivery fully or partially fails to be completed by the agreed deadline, as the fault of the Supplier, then RK Kutting GmbH is entitled – following the unsuccessful expiry of a period of grace of 2 weeks to be set by RK Kutting GmbH – to withdraw from the Agreement or to require compensation on the grounds of default.
- c) In the case of a fixed-date transaction (as per §376, HGB (=Commercial Statute Book)), there is no requirement to allow a period of grace.
- d) If delivery is made before the agreed delivery date, RK Kutting GmbH reserves the right to send it back at the Supplier's expense and risk. If a premature delivery is not sent back, then the goods will be stored at the premises of RK Kutting GmbH at the Supplier's expense and risk.
- e) If it is perceived that a delivery or service is going to be delayed, then RK Kutting GmbH must be promptly notified and the decision of RK Kutting GmbH must be obtained.
- f) The acceptance of a delivery conducted with delay does not affect any entitlements of RK Kutting GmbH to receive compensation.
- g) In the event of application for or the commencement of insolvency, composition or full enforcement proceedings for the Supplier's assets, or in the event of such application being declined for lack of assets and cessation of payments, RK Kutting GmbH is entitled to withdraw from the Agreement even if the Agreement has already been wholly or partially fulfilled by RK Kutting GmbH or by the Supplier or by both sides whilst the guarantee periods incumbent on the Supplier have not yet expired.

4. TRANSFER OF RISK AND DISPATCH; DISPATCH COSTS

- a) In the case of supplies including installation or assembly, and in the case of services, risk will transfer upon receipt. In the case of supplies excluding installation or assembly, risk will transfer upon arrival at the destination address stipulated by RK Kutting GmbH.
- b) Unless agreed otherwise, the costs of dispatch, insurance and packing are borne by the Contractor. In the case of pricing on an ex-works basis or on the basis of dispatch from the Contractor's sales store, dispatch must be conducted at the lowest possible costs unless any specific mode of transportation has been stipulated by RK Kutting GmbH. Any additional costs arising because of failure to comply with a dispatch instruction must be borne by the Contractor. RK Kutting GmbH may also determine the mode of transport in the case of pricing free to place of receipt. The additional costs for expedited delivery as required in order to fulfil any delivery deadline must be borne by the Contractor.
- c) Packing slips or delivery notes indicating contents, and the order reference indicated in full, must be enclosed with each consignment. Dispatch must be announced immediately, including the same items of information.

5. IMPEDIMENTS UPON SUPPLY

- a) Any unforeseeable measures ordered by the authorities, and any instances of force majeure including strike and lockout, which could not be foreseen by – and which are not attributable to – the Supplier will result in the Supplier being excused from its contractually accepted obligation for the duration of the unforeseeable situation.
 - b) If any such incident should persist for longer than 2 months, or if the Supplier is still incapable of providing the required service due to the abovementioned situation, then RK Kutting GmbH will be entitled to withdraw from the Agreement.
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6. INVOICES; DUE DATES

- a) Invoices must bear an indication of the order reference together with the reference numbers for each individual item. Only then can they be processed. No invoices will fall due for payment for as long as the above details are missing. Duplicate invoices must be clearly identified as duplicates.
- b) Likewise, if the Contractor has to provide material tests, test reports, quality documents or any other documentation, then the completeness of the supply and service will be conditional upon the provision of such details. Only upon provision of these documents will any invoices fall due for payment.

7. PRICES; PAYMENTS

- a) The price indicated on the order is binding.
- b) Unless agreed otherwise elsewhere – and in writing – the price will include the supply including dispatch, insurance and packing.
- c) No payments are made for visits or for the preparation of offers and projects.
- d) Unless otherwise agreed, payments are made within 14 days as from the date of complete delivery and receipt of a viable invoice, but not earlier than the date of delivery (with a 3% discount) or within 30 days (with a 2% discount) or within 90 days (payment net).
- e) Likewise, if the Contractor has to provide material tests, test reports, quality documents or any other documentation, then the supply and service will be deemed complete only once these details have been provided. Only on provision of these details will any invoices fall due for payment (refer Clause6, Invoices; Due dates). The deduction of a discount is also permissible if RK Kutting GmbH applies offset or withholds a reasonable proportion of the payments due to defects; the payment timeframe will begin once any defects are fully rectified.
- f) The settlement of payments does not mean that any supplies or services are recognised as being contractually compliant.
- g) RK Kutting GmbH is entitled to apply offset and retention to the legally viable extent.

8. ASSIGNMENT OF CLAIMS

Claims can be assigned only subject to the written consent of RK Kutting GmbH.

9. LIABILITY FOR DEFECTS; GUARANTEE; REPORTING OF DEFECTS

- a) The period of expiry for claims on the grounds of defects, including claims held by RK Kutting GmbH under §§ 445a and 445b, BGB (=German Civil Code), extends to 36 months. The corresponding timeframe starts to run as laid down by law. If the law corresponding to §438, paragraph 1, clause 2 BGB (Building projects and items for building projects) and §634a, paragraph 1, BGB (Construction defects) stipulates longer expiry periods, then such periods will apply.
- b) If any defects are detected before or at the stage of the transfer of risk, or if they come to light during the period of expiry for claims on the grounds of defects, then the Contractor must, at its own expense and at the discretion of RK Kutting GmbH, either rectify the defects or provide replacements. The same applies concerning any supplies where testing/inspection was limited to random samples. The Client's option will be made according to a reasonable assessment. Otherwise, guarantee claims will be defined according to legal provisions.
- c) Rectifications can be carried out by RK Kutting GmbH without the setting of any period of notice and at the Supplier's expense if delay had already been incurred at the time of delivery and if RK Kutting GmbH needs immediate rectification in order to avoid incurring delay or if any other form of urgency applies.
- d) This does not affect further claims, especially claims for the reimbursement of wasted machining or processing costs.
- e) Defects can be reported within eight working days as from the supply or service – or if the defects could only be detected at the stage of machining/processing or of commissioning (concealed defect) – within eight days as from their detection.

10. PROTECTED RIGHTS

- a) The Supplier is responsible for ensuring that no third parties' rights are infringed in connection with its supplies.
- b) If RK Kutting GmbH receives any complaint or claim from a third party in this connection, then the Supplier is obliged to hold RK Kutting GmbH exempt from any such complaints or claims.
- c) The Supplier's obligation for providing exemption extends to all expenditures incurred by RK Kutting GmbH from or in connection with being claimed against by a third party.

11. RESERVATION OF OWNERSHIP, CLIENT'S PROVISION OF ITEMS; TOOLS; SECRECY

- a) If RK Kutting GmbH provides the Supplier with any components, then RK Kutting GmbH retains ownership of such components. Processing or reconfiguration work conducted by the Supplier is conducted on behalf of RK Kutting GmbH. If reserved-ownership goods belonging to RK Kutting GmbH are processed in conjunction with items not belonging to RK Kutting GmbH, then RK Kutting GmbH acquires shared ownership of the new item in proportion to the value of its own items relative to the other processed items at the time of their processing.
- b) If the item provided by RK Kutting GmbH is inseparably combined with items not belonging to RK Kutting GmbH, then RK Kutting GmbH acquires shared ownership of the new item in proportion to the value of the reserved-ownership goods relative to the value of the other combined items at the time of such combining. If the items are combined in such a way that the item belonging to RK Kutting GmbH has to be regarded as the main item, then it is hereby agreed that the Supplier should transfer a portion of ownership to RK Kutting GmbH; the Supplier will retain sole or shared ownership on behalf of RK Kutting GmbH.
- c) RK Kutting GmbH reserves ownership over tools; the Supplier is obliged to utilise tools exclusively for the manufacture of the goods ordered by RK Kutting GmbH. The Supplier is obliged at its own expense to provide fire, water and theft insurance cover for tools belonging to RK Kutting GmbH. The Supplier is obliged at its own expense to promptly carry out any required servicing and inspection tasks. The Supplier must immediately notify RK Kutting GmbH of any problem situations; if it culpably fails to do so, then it renders itself liable to provide RK Kutting GmbH with compensation.
- d) Any tools, moulds, specimens, models, profiles, drawings, standards sheets, printed documents and gauges that have been provided for the Supplier by RK Kutting GmbH must – together with any items manufactured on the basis of them – neither be passed on to third parties without the consent of RK Kutting GmbH nor used for any purposes other than as contractually intended. They must be protected against unauthorised examination or utilisation. Without prejudice to further rights, RK Kutting GmbH may require that such items be handed back if the Supplier infringes the above obligations.

- e) The Supplier is under obligation to observe strict secrecy concerning all illustrations, drawings, calculations and other documents and information. They may be disclosed to third parties only by the express consent of RK Kutting GmbH. The secrecy obligation also extends to personal data. The secrecy obligation continues to apply even after this Agreement has been completed or has failed; the obligation expires if and to the extent that the production knowhow comprised within the illustrations, drawings, calculations and other documents have become the subject of general knowledge. Subcontractors must be bound over to the corresponding obligations.

12. JURISDICTION; PLACE OF FULFILMENT; APPLICABLE LAW

- a) The exclusive place of jurisdiction is Talheim bei Heilbronn/N. Furthermore, RK Kutting GmbH is also entitled to bring action against the Supplier in the jurisdiction of its place of business.
- b) Unless otherwise indicated in the order or in the order confirmation, the place of business of RK Kutting GmbH is the place of fulfilment.
- c) Exclusively German law shall apply to the exclusion of the law governing the conflict of legal systems and to the exclusion of the United Nations Convention of 11 April 1980 governing Contracts for the International Sale of Goods (UN purchasing law/CISG).