



**General Terms and Conditions of Purchase for Deliveries and Services**

**– valid from 1 July 2020 –**

**I. Conclusion of the Contract, Application of these Terms and Conditions, Confirmation of Orders, Text Form**

1. Orders placed by us, Kjellberg Finsterwalde Plasma und Maschinen GmbH, and the other companies of the Kjellberg Group (see <https://www.kjellberg.de/de/agb.html>) are based on these General Terms and Conditions of Purchase (GT&CsP). Other terms and conditions shall not become part of the contract, even if we do not expressly object to them. If we take receipt of the supplier's delivery/service without express objection, it shall under no circumstances be concluded therefrom that we have accepted the seller's terms and conditions of sale.
2. These GT&CsP shall, until revoked by us, also apply to all future contractual relations with the supplier. Agreed deviations shall apply only to the order for which the deviations have been confirmed in writing.
3. If special terms and conditions deviating from these Terms and Conditions are expressly agreed upon for a particular order in any individual case, these GT&CsP shall apply with lower precedence and on a supplementary basis.
4. Offers shall be submitted by the supplier bindingly and free of charge. No remuneration or compensation shall be granted for supplier visits or for the drawing-up of offers, projects etc. by the supplier.
5. The following shall apply to orders from us that have not been preceded by a binding offer from the supplier: If the supplier does not accept our order in text form within 10 calendar days of receipt, late acceptance by the supplier shall be deemed to be a new offer from the supplier, which shall require our acceptance. If the supplier accepts our order with deviations, it shall clearly point out these deviations to us. A contract shall come into effect only if we have consented to these deviations in text form.
6. Only purchase orders placed by us in text form shall be legally binding. Orders placed verbally or over the telephone shall be legally valid only if subsequently confirmed by us in text form.

**II. Prices, Payments, Place of Performance**

1. The price stated in the purchase order shall be binding.  
  
Unless otherwise specially agreed, the prices shall be free to the delivery address and include packaging. The agreed prices shall be fixed prices and exclude supplementary claims of any kind.
2. In the event of failure to deliver in conformity with the contract, in particular defective delivery, we may, without losing any rebates, cash discounts or similar preferential terms of payment, withhold payment until performance has been properly rendered.
3. Unless otherwise specially agreed, the invoice shall be settled either within 14 days of receipt of the invoice with a 2 % deduction from the net price or within 30 calendar days from receipt of the invoice and provision of the counter-performance. Payment shall be made with the proviso that the invoice is subject to checking.
4. Unless otherwise expressly agreed, our desired delivery address shall be the place of performance or fulfilment for the supplier's delivery obligation; for all other obligations of both parties, the place of performance or fulfilment shall be 03238 Finsterwalde, Oscar Kjellberg Straße 20. The risk of accidental destruction and accidental deterioration shall not pass to us until acceptance has been declared at the place of performance or fulfilment.

**III. Retention of Title**

We shall recognise an ordinary retention of title by the supplier; prolonged or extended retention of title is ruled out.



**IV. Delivery Dates, Default in Delivery, Premature Delivery, Sub-deliveries**

1. Agreed delivery dates shall be binding. The decisive factor for adherence to the scheduled delivery date or period shall be the date when the goods are properly received, or the service is faultlessly rendered, and the documentation is handed over at the delivery address specified by us, or the timeliness of successful acceptance.
2. If the supplier becomes aware that an agreed date cannot be met for any reasons whatsoever, he shall give us notification thereof in text form without delay, stating the reasons and the expected duration of the delay. In no event shall the agreed delivery date be altered as a result of notification of an expected delay in delivery.
3. If the supplier defaults on delivery, we shall be entitled to the statutory claims. Acceptance of a delayed delivery/service shall not constitute a waiver of damage claims. Before rescission is declared, we shall, as a rule, set the supplier a reasonable time limit for performance or supplementary performance, unless the setting of such time limit is dispensable for statutory reasons (e.g. in the case of a transaction where time is of the essence; i.e. the transaction is to stand or fall depending upon timely performance by the supplier). Even after a reasonable time limit set by us has expired to no avail, we shall be entitled, at our option, to still demand delivery/performance, declare rescission or obtain a replacement from a third party and/or claim damages. Our claim to delivery/performance shall cease to exist only if we declare rescission or claim damages in lieu of performance.
4. If delivery takes place earlier than agreed, we shall have the right to return the delivery at the supplier's expense. In the event of premature delivery, we shall have the right not to pay until the agreed due date, also with a cash discount.
5. We shall accept sub-deliveries only by express agreement. Sub-deliveries shall be designated as such in the shipping documents. At the time of the delivery, the remaining residual quantity shall be listed in text form. Even if we consent to a sub-delivery, the agreed dates for the delivery as a whole shall continue to apply; i.e. the delivery shall not be deemed completed until the contract has been fully performed.

**V. Scope of the Duty to Perform, Over- und Under-deliveries, Sub-delivery, Liability for Defects, Statute of Limitation**

1. The supplier shall be liable that the contractual item conforms to the latest state of the art, the relevant legal provisions and the provisions and guidelines of public authorities, occupational insurance associations and trade associations, as well as the EU standards.
2. Over-deliveries or under-deliveries shall, without prejudice to Kjellberg's rights based on liability for defects, be subject to consent granted in text form. In the event of over-deliveries, Kjellberg shall, even without consulting the supplier, have the right to return non-ordered quantities at the supplier's expense.
3. Acceptance of the goods shall be subject to an inspection, in particular to checking that the goods are free of defects and are complete. We shall, without delay, notify the supplier in text form of obvious defects in the delivery/service as soon as they are discovered in the proper course of business, but no later than within 5 working days of receipt of the delivery to us. Our statutory obligation to report defects subsequently becoming apparent shall remain unaffected.
4. If a defect in quality becomes apparent within six months of the passage of risk, it shall be assumed that the item was already defective at the time of the passage of risk, unless this assumption is inconsistent with the nature of the item or the defect.
5. In the event of defectiveness or an unauthorised sub-delivery, we shall have the right to demand supplementary performance from the supplier in accordance with the statutory provisions, which shall involve either delivery of a defect-free item or rectification of the defect. The supplier shall bear all expenditure necessary for the purpose of supplementary performance. This shall include, *inter alia*, transport, travel and labour costs as well as costs of materials. This shall apply even if the expenditure increases as a result of the delivery item having been taken to a place other than the place of performance, but not if disproportionately high costs arise as a result thereof. Supplementary performance shall also include dismantling the defective goods and installing the rectified item or the item delivered defect-free, insofar as the goods have been installed into another item or affixed to another item commensurate with their nature and their purpose of use; our statutory claim to compensation for corresponding



expenditure shall remain unaffected. If the method of supplementary performance chosen by us fails, we shall have the right to still demand that the other method of supplementary performance be rendered. The supplier may refuse to accept the method of supplementary performance chosen by us if this method is possible only at disproportionate expense. In this case, our claim shall, provided that the supplier proves to us such disproportionate expense in text form, be limited to the other method of supplementary performance; in all other respects, statutory rights of the supplier shall remain unaffected.

6. If the supplier fails to meet the obligation to render supplementary performance within the reasonable period to be specified by us, we may, at the supplier's expense, either obtain a replacement or rectify the defectiveness of the goods ourselves or have such defectiveness rectified elsewhere. Moreover, we may also reduce the price. The statutory claims under Section 437 (2) and (3) *BGB* [German Civil Code] shall remain unaffected.
7. The claims to which we are entitled in the event of defects shall become statute-barred in 24 months, unless a longer limitation period applies under Section 438 (1) and (3) *BGB*, or the supplier has agreed to grant us a longer warranty period. If the goods are procured for on-selling or for use in the manufacture of Kjellberg machines or products, the limitation period shall begin at the start of the limitation period for defects in respect of the Kjellberg product equipped with the goods, but no later than six months after delivery of the goods to us.
8. If parts are delivered or rectified in the course of supplementary performance, recommencement of the limitation period provided for herein, or any suspension thereof, shall be governed by the general statutory provisions.
9. Except where otherwise expressly provided for below, the statutory provisions shall apply.

#### **VI. Product Liability, Product Liability Insurance**

1. If, as a result of our product being defective due to goods delivered by the respective supplier, a claim is brought against us on the basis of a violation of official safety regulations or on the basis of domestic or foreign provisions or laws concerning product liability, we shall be entitled to demand from the supplier compensation for this loss, insofar as the loss was caused by the products delivered by the supplier.
2. The supplier undertakes to effect product liability insurance, with an appropriate sum insured, also relating to so-called extended product liability (e.g. dismantling and installation costs).

#### **VII. Property Rights**

1. At all times during the contract as well as thereafter, the supplier shall indemnify us and our customers against all loss, damage and costs that are, on the basis of alleged patent, utility model, registered design, copyright or trademark infringements or similar property right infringements, incurred upon us or our customers, wherever, in connection with the use or sale of the goods delivered by the supplier. The supplier shall, without delay, compensate us and our customers for all costs, loss and damage ensuing therefrom.

If claims relating to the delivery item are asserted against our customers or us on the basis of a patent infringement etc., the supplier shall be informed thereof and be requested to take without delay, at its own expense, all measures necessary for quashing the claims.

2. If, as a result of such claim brought, we are hindered in using or selling parts delivered, and the supplier is not in a position to obtain for us usage authorisation from the holder of the property rights etc., the supplier shall, without delay, deliver an equally suitable replacement that does not infringe property rights etc. or shall, at our request, alter the delivered items in such a way that the property rights are no longer infringed.



The supplier shall not be liable under this Section VII. if and insofar as it is not at fault for the resulting impairment at our company and/or at our customer.

**VIII. Tools/Moulds**

1. Tools/moulds and documents (e. g. plans, calculations, execution instructions) made available by us shall remain our property. Industrial property rights in such tools/moulds shall accrue solely to us. Tools manufactured by the supplier or by third parties for deliveries to us shall become our property upon their manufacture. The supplier shall transfer to us all rights to use these tools/moulds. He shall use the tools/moulds exclusively for manufacturing the goods ordered by us.
2. If the supplier does not meet, or no longer meets, contractual obligations in relation to us, he shall, at our request, surrender to us or to third parties appointed by us the tools/moulds and documents. Any right to retain the tools/moulds and documents is ruled out.

**IX. Non-assignment**

In the absence of our prior consent in text form, the supplier shall not be entitled to assign these against us, or have these collected by a third party, in whole or in part. If the supplier assigns a claim against us to a third party without our consent, the assignment shall nevertheless be effective. In such case, we may, at our option, make payment with debt-discharging effect to the supplier or to the third party.

**X. Obligation to Maintain Confidentiality**

The supplier undertakes to treat confidentially, and not make accessible to third parties, all non-public commercial or technical details that come to its knowledge as a result of the business relationship (in particular the tools/moulds and documents referred to under Section VIII.). Sub-suppliers shall be placed under a corresponding obligation. The supplier shall not reuse or make accessible to third parties any details provided by us concerning the delivery of items ordered by us, or any drawings made on the basis of such details, or any of our own drawings. The same shall apply accordingly to comparable planning and execution documents. The supplier shall surrender to us all benefits that it draws from any breach of this obligation and shall compensate us for any loss or damage resulting therefrom. The latter shall not apply if the supplier is not at fault for the breach of duty.

**XI. Prohibition of Subcontracting**

The supplier shall not be entitled to subcontract the order without our prior written consent. If we give our consent, the supplier shall remain responsible for the performance of the contract.

**XII. Data Protection**

We shall treat the supplier's personal data in accordance with the statutory provisions (General Data Protection Regulation, *Bundesdatenschutzgesetz* [German Federal Data Protection Act]).

**XIII. Contractual Penalty**

For every case of breach of the provisions contained in these GT&CsP by the supplier, the supplier shall pay an appropriate contractual penalty, the precise sum of which shall be determined by us in each individual case at our reasonable discretion within the meaning of Section 315 *BGB* and, if disputed, may be reviewed by the court that has jurisdiction. The contractual penalty shall not arise if the supplier is not at fault for the violation.

The assertion of any damage claim beyond the contractual penalty shall remain unaffected. The contractual penalty shall be credited against any such damage claim.



**XIV. Severability**

If individual parts of these GT&CsP are ineffective, the remaining provisions of the GT&CsP shall remain effective.

**XV. Place of Jurisdiction**

Cottbus is the exclusive place of jurisdiction for all present and future claims arising from the business relationship with merchants, including any claim relating to a bill of exchange or a cheque, unless an exclusive place of jurisdiction is established by law. However, we reserve the right to assert our claims at any other permissible place of jurisdiction.

**XVI. Applicable Law**

These GT&CsP concerning the contractual relationship between us and the supplier shall be governed by the laws of the Federal Republic of Germany, excluding the UN Sales Law Convention of 11 April 1980.

