

## **Standard Terms and Conditions of Purchase for Bernd Kraft GmbH:**

### **1. Scope**

1.1 These Standard Terms and Conditions of Purchase apply exclusively to all deliveries to and services for Bernd Kraft GmbH. Deviating Standard Terms and Conditions from the contractor shall only apply if and insofar as Bernd Kraft GmbH agrees to them in writing.

1.2 Other Standard Terms and Conditions shall not apply even if they are not contradicted expressly in an individual case or if ordered goods are accepted without reservation.

1.3 With the first delivery in accordance with the present terms and conditions of purchase the supplier accepts their exclusive application to all further orders insofar as these are similar transactions.

### **2. Orders, written form and offers**

2.1 The complete order number and order date must be shown in all correspondence. Only written orders and changes to orders issued by the purchasing department of Bernd Kraft GmbH are binding. Oral agreements require mutual written confirmation.

2.2 The confirmation of order must be provided within five days of the date of the order. Bernd Kraft GmbH shall have the right to cancel its order without charge if it was not accepted by the supplier without change within 14 days of the date of the order.

2.3 Offers and price quotations are binding and not subject to costs unless otherwise expressly agreed.

### **3. Delivery period**

3.1 Agreed dates and periods are binding. The receipt of the goods is relevant for compliance with the delivery date or the delivery period. Impending delays to deliveries must be notified to us without delay after they become known showing the reason and the probable duration of the delay to the delivery.

3.2 If the supplier is in default we shall have the right to assert statutory claims and in particular to demand compensation instead of performance and rescission following the unsuccessful expiry of a reasonable period we set. In the event that we claim compensation the supplier shall have the right to provide evidence that it was not responsible for the breach of duty.

3.3 Acceptance without reservation of a late delivery or service does not include a waiver of claims to compensation to which we are entitled as a result of the late delivery or service; this shall apply until the complete payment of money owed by us for the delivery or service

concerned.

#### **4. Deliveries**

4.1 Deliveries of quantities below or in excess of those agreed must be approved. This applies analogously if the goods are delivered before the agreed delivery date.

4.2 Bernd Kraft GmbH shall have the right to refuse to accept goods that are not delivered on the delivery date shown in the order and to return them or have them stored at third parties for the account and at the risk of the contractor.

4.3 Deliveries shall be made to the given delivery address, in compliance with the applicable safety provisions, at the agreed time.

#### **5. Shipping and packing**

5.1 Unless otherwise agreed, shipping shall be carried out to the unloading point free of freight and packaging costs and charges for Bernd Kraft GmbH and at the risk of the contractor. The ordered goods shall be packed appropriately and professionally so that damage, dirt or changes during transport are avoided.

5.2 Specified shipping documents must be included with all consignments; together with the order number they must also contain the exact name, quantity, weight, type and packaging of the delivery item. The order information must also be shown on waybills and invoices and externally visible on packaging and parcel addresses.

5.3 If the required shipping documents are not enclosed with a consignment as specified or if the shipping documents do not contain the above-mentioned information we shall be entitled to refuse acceptance or we shall put into store at the supplier's expense until completion.

#### **6. Transfer of risk, notice of defects, incoming goods inspections**

6.1 The risk shall be transferred to Bernd Kraft GmbH when the delivery is received at the unloading point, in case of delivery with installation or assembly and with other services for work following formal acceptance.

6.2 We shall only carry out incoming goods inspections with regard to externally detectable damage and deviations in identity and quantity that can be detected from outside. We shall notify such deviations within 10 days of delivery. We reserve the right to carry out detailed incoming goods inspections. Defects detected here and other defects that are detected in the course of normal business will be notified to the supplier in writing without delay. Insofar the supplier waives the defence of delayed notice of defect.

6.3 In case of detected defects we shall have the right to return the complete delivery at the supplier's expense or to make it available for collection.

## **7. Guarantee**

7.1 The contractor's guarantee obligation is based on statutory regulations unless otherwise agreed below. The contractor shall indemnify Bernd Kraft GmbH at first request against all claims by third parties that are lodged because of defects, infringements of the patent rights of third parties or product damage to its delivery on the basis of its share of the cause.

7.2 The supplier shall guarantee in accordance with statutory provisions that the goods have the agreed and guaranteed characteristics (e.g. catalogue description, certificates, product descriptions, etc.), are suitable for the use presupposed in the contract and conform to the latest official regulations, the Appliance Safety Act, safety requirements as amended and in force and the regulations governing safety at work and accident prevention.

7.3 Unless otherwise agreed the statutory periods shall apply. The guarantee period shall be suspended for the period that starts with the sending of our notice of defect and ends with our acceptance of the delivery or service free of defects.

7.4 In case of defective delivery we may demand either subsequent performance, i.e. remedy of the defect and delivery of perfect goods, withdraw from the contract in accordance with statutory provisions, reduce the purchase price or demand damages or reimbursement of expenses. In urgent cases Bernd Kraft GmbH shall have the right, following consultation with the contractor, to remedy the defect itself at the contractor's expense or to have it done by a third party or to obtain a replacement elsewhere. This shall also apply if the contractor is in default with the fulfilment of its guarantee obligation.

7.5 The contractor shall be liable for substitute deliveries and reworking to the same extent as for the original delivery item, in other words for transport, travel and labour costs, without restriction to this. The guarantee period for substitute deliveries shall commence at the earliest on the date the substitute delivery is received.

7.6 If a guarantee is given for the quality or durability of the delivery item Bernd Kraft GmbH may lodge claims under guarantee as well as the above-mentioned claims.

## **8. Prices and terms of payment**

8.1 The price shown in the order is binding. The agreed payment periods shall commence after receipt of the goods and the invoice. Payment shall be made subject to correct delivery and correct pricing and accounting. If a defect subject to guarantee is detected we shall have the right to retain payment until the guarantee obligation is fulfilled.

8.2 Bernd Kraft GmbH shall only process invoices, which are to be sent in duplicate by separate post, if in conformity with the specifications in the order they contain the order number referred to therein. The supplier shall be responsible for the consequences of non-compliance with this obligation.

8.3 Payments shall be due 30 days after delivery and receipt of the invoice. Unless otherwise agreed the buyer shall pay the purchase price within 14 days, calculated from delivery and receipt of the invoice, with 2% discount or net within 30 days of the receipt of the invoice.

### **9. Setting off and assignment**

The contractor shall only be permitted to set off with claims that are not disputed or that are legally enforceable. The supplier may not assign claims against Bernd Kraft GmbH to third parties without the written consent of Bernd Kraft GmbH. This shall not affect s. 354a of the German Commercial Code. However, in this case the supplier shall notify Bernd Kraft GmbH without delay of the assignment without this affecting the right of Bernd Kraft GmbH to pay the supplier with discharging effect pursuant to s. 354a sentence 2 of the German Commercial Code.

### **10. Third-party patent rights**

The contractor guarantees that third-party rights do not bar the use of the deliveries and services in accordance with the contract, in particular that third-party patent rights are not infringed. Insofar as Bernd Kraft GmbH is sued for a possible infringement of third-party rights, such as, e.g., patents, copyright and other industrial property rights, the contractor shall indemnify Bernd Kraft GmbH against this and against any payment in this context.

The contractor shall pay royalties or costs that accrue to avoid or remedy patent infringements.

### **11. Confidentiality and data protection**

We shall retain title to manufacturing provisions, internal data, appliances, etc., that we have handed to the contractor on the submission of an offer or to carry out an order. They may not be used for other purposes, duplicated or made accessible to third parties and shall be kept with the care of a responsible businessman.

The customer declares that it agrees revocably that personal data that is passed on is processed on an order-related basis subject to statutory provisions.

### **12. Place of performance, legal venue, applicable law, concluding provisions**

12.1 All agreements that were concluded between the parties for the purpose of implementing this contract are written down in the contract. There are no verbal ancillary agreements. Supplements or amendments to this contract, including this clause on the written form, must be in writing.

12.2 Unless otherwise shown in the order the place of performance is Duisburg.

12.3 The legal venue is Duisburg. Unless other laws are applied mandatorily the laws of the Federal Republic of Germany shall apply to all deliveries and services, subject to the exclusion of the UN Sales Convention and the referral provisions of German private international law.

12.4 If one or more provisions of these contractual conditions or contract clauses is or becomes invalid in whole or in part or if this contract contains loopholes this shall not affect the validity of the remaining conditions and clauses. The other parties agree to replace the invalid clause with another that most closely approaches the commercial goal of the invalid or missing provision and is itself valid.

Duisburg, the 27th of January 2009