

## 1. Preamble

The present "General Purchasing Terms and Conditions" (hereinafter called "GPTC") shall apply exclusively to any and all contracts concluded with companies of the Kremsmüller Group (hereinafter referred to as "we", "us", or "Buyer"; company name and address as per purchasing order), be it contracts for the supply of goods or services, or contracts for work and labour.

The partner to whom we have awarded such a contract for the supply of goods, services, or labour shall hereinafter be referred to as "Supplier".

Supplier and Buyer together shall individually or together be called "the Parties to the Contract" or "Parties".

## 2. General Provisions

2.1. The content of any contract concluded between us and Supplier shall primarily be governed by the specific individual agreements as set out in our order(s) and based on Supplier's offer(s).

2.2. In case that no such agreements have been made, no other provisions than those set out in the present GPTC shall constitute the contract between the Parties. Any deviating terms and conditions of sales by Supplier shall be excluded, even if we have not expressly rejected these upon receipt.

2.3. Any followup orders placed either orally or in writing shall also be subject to the present GPTC, without us having to make special references to this provision.

## 3. Placing of Orders

3.1. Orders shall only be deemed legally binding if and when they have been duly signed and issued by us in writing. Orders transmitted by fax shall be accepted.

3.2. The Parties agree that, unless otherwise required, legally significant statements or declarations of either Party may also be transmitted electronically. However, should any such statements arrive at our premises outside of our official hours of business, they shall not be deemed received until the start of our official hours of business on the following working day.

Our official hours of business are Monday through Thursday from 7:15 to 16:30 and Friday from 7:15 to 12:45.

3.3. Immediately after acceptance Supplier shall forward a written confirmation of our order. Deviations, changes or additions to the order or placing of the order, which are to be emphasized clearly, require our written confirmation. If Supplier does not accept the order to the full extent within two weeks of receipt, our order is no longer binding, and we are entitled to revoke our order. If we do not revoke the order, and Supplier does not react to our order, the order is considered as accepted as placed by us.

3.4. Any and all documents, and particularly commercial invoices, issued by Supplier in reference to an order placed by us shall bear our official Job No. and Order No. In case of noncompliance we reserve the right to refuse processing such documents and may return them to sender. In case of a preliminary order having been placed by phone without providing an official Order No., all correspondence and documents shall bear the name of the person who placed the order.

## 4. Subcontracting / Assignments

Supplier shall not subcontract any work to be performed under an order placed by us without having obtained our prior written approval.

## **5. Prices/Offers**

- 5.1. Any offers submitted by Supplier shall be entirely free of charge to us. Supplier shall adhere strictly to our inquiry; deviations must be marked expressly and clearly. Supplier is bound to his offer for at least four weeks from our receipt of the offer.
- 5.2. Unless otherwise agreed, prices shall be deemed fixed, packaging included, and based on the delivery terms stated in our orders in accordance with INCOTERMS 2000.

## **6. Delivery and Services**

- 6.1. Unless otherwise agreed in writing, deliveries shall be effected to the named place of destination in accordance with the INCOTERMS stated in our order. If there are no explicit stipulations, deliveries shall be made to our warehouse in A-4641 Steinhaus/Wels. Supplier shall be responsible for adequate packaging at his cost and expense and shall obtain any transport and other insurances that may be required. At our discretion, shipping and packing materials shall become our property or will be disposed of immediately by Supplier at his expense.
- 6.2. We shall be entitled, without obligation to give reasons, to demand Supplier to interrupt delivery of goods and/or the rendering of services and to reschedule agreed dates or deadlines. Supplier shall only be entitled to compensation for such interruption and/or rescheduling if the aggregate of such interruption or rescheduling exceeds five consecutive (5) working days. Such claim for compensation shall be limited to the actual standstill costs proven by Supplier. No storage fees shall be charged to us.
- 6.3. Supplier shall inform us about the delivery of goods and services no later than three days before the date of delivery.
- 6.4. The contractual scope of supplies and services is to be delivered to the stipulated destination on the date stated in the order(s), and to be presented to the incoming goods department Monday through Thursday from 7:15 to 12:00 and 13:00 to 16:30, and Friday from 7:15 to 12:00. In case of delivery prior to the stipulated delivery date, we shall reserve the right to charge Supplier with any additional costs and expenses we might incur due to storage and handling costs.
- 6.5. When supplier is delivering goods or providing services on our premises he shall obey the directions for non-employees concerning security, environmental and fire protection currently in force.
- 6.6. Supplier shall pick up returns within one week; otherwise they will be returned or stored by us, at our discretion. Returns and storage shall be at the expense and risk of Supplier.

## **7. Documentation, Certification, Initial Training**

- 7.1. The documentation shall form an essential part of the Contractor's supplies and services.
- 7.2. Documentation is the total of written, drawn, digital (incl. source code) or other documents related to the Contractor's supplies and services and serves to assist the Parties to the Contract in fulfilling their obligations vis-à-vis their contracting partners and the authorities involved in due time and in the most economical way. Such documentation may be related to manufacture, quality control, potential risks, safety, health and antipollution regulations, shipping, transport, export, import, customs clearance, taxes, identification of parts, logistics, storage assembly, commissioning, training, accounting, invoicing, operations, repairs maintenance, procurement of spare parts, etc.
- 7.3. We shall be granted the exclusive and unrestricted right to use the documentation (copyright).
- 7.4. Unless otherwise agreed in writing, all documentation is to be in the German language and shall be made available free of charge DDP to the head office Steinhaus both in hard copy and electronic format. The documentation, which shall be compiled according to the relevant CE directives, is to be submitted to us as specified in our order. If not specified in detail, the documentation shall be adequate for the

respective case in terms of volume, quality and timeliness, especially the requirements of a proper operation.

7.5. The documentation includes particularly the following items:

- Amended final documentation (as built documentation)
- Test documentation, including time schedules, progress reports, etc.
- Declaration of conformity, EC type approval certificate and manufacturer's declaration
- Supplier shall compile product-specific detailed test documentation and/or product-specific CE declarations of conformity that conform to the specified scope and must be drawn up for the entire plant, including adjacent plants in the line.
- Instruction handbook / operating manual, drawings, installation, commissioning and maintenance instructions, operating and safety instructions, material safety data sheets (MSDS), source codes
- Spare and wear parts lists including buying source
- Documentation of origin / valid evidence of entitlement to preferential tariff treatment (movement certificate, preferential certificate of origin, certificate of origin, confirmation of origin, declaration of origin, etc.)
- Shipping documents / transport specification

7.6. All deliveries shall be accompanied by shipping documents, issued exclusively in the German language, with complete information (in particular quantities, part/material descriptions, purchase order numbers, etc.). In case of noncompliance we shall reserve the right to refuse acceptance.

7.7. In the event changes are made during the processing of the order, these changes must be immediately reflected, free of charge, in all affected technical data and documentation so as to ensure completely updated final documentation.

7.8. For supplies and services required to bear the CE-mark / ATEX declaration of conformity, this must conform verifiably to all relevant regulations – in particular the applicable EU Directives (e.g. machinery, pressure equipment and ATEX Directive) according to the national implementation.

Supplier shall affix the CE mark to / draw up the ATEX-certificate of conformity and /or issue the declaration of conformity / EC type-approval certificate for a ready-to-use machine / entirety of machines / facility / subassembly / equipment and protective systems and combinations thereof and/or submit to us all necessary declarations of conformity in the languages prescribed for the documentation.

7.9. We shall receive the right to have equipment and the declarations examined by an independent expert. In the case of defects, the costs incurred by the independent expert shall be borne by the Supplier.

7.10. In the case of delivery of technical plants and equipment, the operating personnel is to be given initial training free of charge. If necessary, the required assembly sheets, processing instructions etc. are to be provided.

7.11. All charges, fees and additional costs resulting from failure to submit such documentation or from incorrect statements shall be borne by Supplier.

## **8. Invoicing and Payment Terms**

8.1. Unless otherwise agreed in writing, invoices shall be issued via E-Mail to [eingangsrechnungen@kremsmueller.com](mailto:eingangsrechnungen@kremsmueller.com) after delivery of the contractual scope of supplies and services. The payment term shall commence at the time that the invoice has been duly presented to us, or the goods have been received, or the contractual scope of supplies and services has been completed, whichever comes last. However, should delivery have been made prior to the stipulated date, the payment terms shall start on the stipulated delivery date at the earliest.

8.2. Payments to the order of Supplier / Contractor will only be effected at that time and to that extent, as we obtain payment from the client. Down payment / part payment invoices or final invoices will only be effected, if we receive payment from the end customer before. A delay of payment by the end customer entitles us to extend payment terms for payments to the Contractor / Subcontractor to the same extent.

8.3. Payments shall be effected within 21 days with 3 % discount, or within 60 days net. The discount applies to each payment within the prescribed period, likewise in case of justified set-off with counterclaims.

8.4. The calculations must correspond to the regulations of the Austrian VAT Act (UStG), as amended.

8.5. Effected payments do not affect our possible warranty/guarantee claims and/or claims for damages, penalties etc. and are in particular not considered as confirmation of due delivery.

## **9. Delays**

9.1. Should Supplier fail to meet the stipulated delivery time for the contractual scope of supplies and services, we shall be entitled to terminate the contract with immediate effect, i.e. without any further period of grace, no matter what the reason for such a delay might have been.

9.2. Supplier shall be obliged to notify us immediately should he notice that a delay in delivery of the contractual scope of supplies and services (partially or in full) might occur. In this case he shall state the reasons for the delay as well as a suggested time schedule for completion. We shall reserve the right, however, to still terminate the contract with immediate effect, i.e. without any further period of grace, to protect the interests of our company.

## **10. Warranty**

10.1. Supplier shall warrant that for a period of two years for movable goods, three years for nonmovable goods, starting from unconditional acceptance, the supplies shall be free from any defects in materials or workmanship and shall conform with the provisions of the order as well as any other statutory requirements or official industrial standards such as ÖNORM (Austrian standards) or similar. Above all, Supplier shall guarantee any contractual and implied properties of the scope of supplies and that the quality of the supplies shall conform with the samples, if samples have been provided.

10.2. The contractual warranty time shall commence with the date of the unconditional acceptance of the supplies by us.

10.3. Our duty to inspect and complain, particularly inspection and complaint under §§ 377 ff of the Austrian Business Code (Unternehmensgesetzbuch – UGB) is excluded.

10.4. In the event of a warranty claim, Supplier shall immediately after notification and without delay repair, or replace, or substitute or make good the nonconforming supplies at his cost, risk and expense. Should the Supplier fail to do so within an acceptable time, we reserve the right to have the necessary work done by third parties at the cost, risk and expense of Supplier. In any case, the contractual warranty time shall not be negatively affected but start again in full.

The parties may also agree on a price reduction of the scope of supplies, or refer to other suitable remedies.

## **11. Supplier's Liability**

11.1. We reserve the right to hold Supplier liable for any and all damages, losses, or other disadvantages in connection with the performance of the contract and Supplier shall hold us entirely harmless therefore.

11.2. Apart from his warranty obligations Supplier has to bear all subsequent costs of an unsatisfactory/defective supply, whether he is accountable for the defect himself or not. In particular he shall bear all costs of the determination of deficiency and all costs of the removal of defects. Supplier shall

fully compensate us for all disadvantages. Supplier's suppliers shall be deemed vicarious agents according to § 1313a of the Austrian General Civil Code (ABGB); therefore, Supplier shall also be liable for any misconduct of a sub-supplier.

11.3. **Product Liability:** In case of any claim against us in connection with the violation of safety regulations or on the basis of product liability laws/regulations Supplier shall indemnify and hold us harmless and shall be fully liable for all losses and damages incurred by us as a result of such claim - provided such claim is based on or ascribable to defects or failures in Supplier's supplies and services, or unsafe products of Supplier as per the applicable product liability laws/regulations.

Supplier shall be responsible to obtain sufficient insurance – with a minimum cover for each insured event of EUR 1 Million – to cover all risks in connection with product liability and upon our request shall submit a confirmation of insurance coverage to us. Such insurance – even if reviewed by us – shall in no event limit Supplier's responsibilities and liabilities under this article.

## **12. Liquidated damages**

In case of a delay in delivery, Supplier shall pay liquidated damages of 1 % for each commenced calendar week, not to exceed 20 % of the total order value (incl. VAT).

In that event we shall reserve any further rights we may have – in particular the right to assert exceeding compensation claims.

## **13. Confidentiality and Intellectual Property Rights**

13.1. Any and all samples, patterns, drawings, specifications, data sheets, and other materials we provide to Supplier for the execution of the contractual scope of supplies and services shall remain exclusively our intellectual property to use as we see fit. Any such information, or additional information acquired during the order execution, shall be treated by Supplier with utmost confidentiality and solely for the purpose of executing our orders and contracts. Supplier shall not share any such information with any third parties without our specific prior written consent. After completion of the contractual scope of supplies and services, Supplier agrees to return any such materials free of charge.

13.2. Supplier agrees to safeguard any and all trade and industrial secrets he may have become aware of in the course of executing the order.

## **14. Industrial Property Rights**

14.1. Supplier guarantees that the commodity supplied by him is not subject to any sales restrictions – in particular Supplier shall waive any right he may have to reserve ownership in a consignment after delivery has been effected. Furthermore Supplier warrants that by processing or resale of the supplied goods neither domestic nor foreign industrial property rights of any kind are violated.

14.2. Supplier shall indemnify us and hold us harmless against any responsibility and/or liability for any claims and/or suits by third parties (including legal and consultancy fees).

## **15. Applicable Law and Jurisdiction**

15.1. This agreement shall be governed exclusively by the substantive law of the Republic of Austria excluding any conflict of law provisions. This shall also apply to the issue of the conclusion of this contract as well as to the legal consequences of its continuing effect. The CISG (UN Law of Sales) shall be excluded.

15.2. Any disputes arising hereunder or in connection with our orders shall be submitted to the exclusive jurisdiction of the competent local court in 4600 Wels/Austria.

## **16. Severability**

Should any individual provision or any part of any provision be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected.

In such an event the Parties shall undertake to replace the void and/or illegal and/or unenforceable provision or provisions by effective provisions approximating as closely as possible the economic purpose of the original provision.

## **17. Code of Conduct**

17.1. We have designed core principles and values which demonstrate our willingness to share business ethics, social and environmental commitments with our suppliers: such principles and values are outlined in the document „Verhaltenskodex der Kremsmüllergruppe /Code of Conduct“, available at <http://www.kremsmueller.com/coc>. We require the Supplier and Supplier's sub-contractors to adhere to this Code of Conduct.

17.2. In particular, the Supplier undertakes to comply with and to cause its sub-contractors and any person under its control, to comply with all applicable national, European and international rules relating to ethical and responsible standards of behaviour, including, without limitation, those dealing with human rights, environmental protection, sustainable development and bribery, as it is described in our policies and set out in the respective purchasing agreement.

17.3. At our request, the Supplier shall inform us and or the ordering party of the measures adopted to ensure compliance with the rules. From time to time, we shall be entitled, by ourselves or through a third party auditor nominated by us, to audit Supplier and its sub-contractors, in order to control Supplier's conformity with the rules.