Ein Unternehmen der SIEGENIA GRUPPE

General purchasing and ordering conditions

of KFV Karl Fliether GmbH & Co. KG

valid for all purchases and orders from 01. January 2021

- - hereinafter referred to as „AEB“ –

These AEB are only valid for companies in the sense of § 14 BGB, legal entities under public law or a separate estate under public law, or comparable legal entities in other legal systems.

1. Scope

1.1.

These general purchasing conditions (AEB) are valid for all business transactions with our suppliers, vendors and other business partners (hereinafter referred to as "suppliers").

These AEB are valid especially for agreements concerning the sale and/or the delivery of moveable objects („goods"), without consideration of whether the supplier producers the goods himself or purchases the goods from subcontractors (§§ 433, 650 BGB). If no other explicit arrangements have been agreed, these AEB that are valid at the time of the order, in the most recent version in text form submitted to the supplier and also as a framework agreement for equivalent future agreements shall be applicable, without having the need to point them out again in every individual case.

1.2.

These AEB are exclusively valid. Deviating, contrary or supplementary general terms and conditions of business of the supplier shall only and insofar be a constituent of this agreement if we have explicitly consented to these terms in written form. This requirement for consent is valid in an event and therefore, for example, even when we, being aware of the general terms and conditions of the supplier, accept his deliveries without reserve.

1.3.

If, in individual cases, we have made individual agreements with the supplier (including ancillary agreements, supplementations or modifications), these always take priority over these AEB. Subject to evidence to the contrary, a written contract or our written confirmation is mandatory for the contents of this kind of agreement.

1.4.

Legally relevant declarations and notifications of the supplier with regard to the agreement (e. g. deadlines, notices of defects, withdrawals) must be submitted in written form, this means in written or text form (e. g. letter, e-mail, fax) unless other arrangements have explicitly made. Legal formalities and further evidence, particularly in case of doubt concerning the legitimation of the person making the declaration remain unaffected.

1.5.

In case of doubt, any references to the validity of legal provisions are for the purpose of clarification only. Even without such clarifications the legal provisions shall apply insofar as they are not directly amended or explicitly excluded in these AEB.

2. Conclusion of agreement

2.1.

Our order shall not be regarded as binding until it has been submitted in written form or in case of confirmation. The supplier must point out obvious errors (e. g. typing or calculation errors) and incompleteness in the order including the order documents for the purpose of correction or completion prior to acceptance, otherwise the agreement shall be regarded as not concluded.

2.2.

The vendor is required to confirm our order in writing within a period of 7 work days or to execute the order without reservation by shipment of the goods (acceptance).

A delayed acceptance shall be regarded as a new offer und shall require our acceptance.

3. Delivery data and delayed delivery

3.1.

The delivery date we defined in the order or the call-off is binding. If the delivery period is not specified in the order and no other arrangements have been made, the period will amount to 2 weeks from the conclusion of the agreement. The vendor shall agree to notify us in writing without delay if he anticipates that he will not be able to meet the arranged delivery dates - for whatever reason.

3.2.

Decisive for the adherence to the delivery data is the receipt of the goods at the application site we have defined. If the supplier does not provide his service or does not provide it within the arranged delivery period or is behind schedule, our rights will be compliant with the legal provisions - in particular with regard to withdrawal and compensation. The regulations defined in the following paragraph (3.3.), however, shall remain unaffected.

3.3.

If the supplier is in default, we are entitled to demand - beside the assertion of further legal claims - a lump-sum compensation for our damages caused by delay amounting to 1 % of the net price per completed calendar week, however, no more than a total of 5 % of the net price of the goods delivered too late. We shall retain the right to prove that greater damage has been incurred. The supplier shall retain the right to prove that no damage has been incurred or only significantly less damage has been incurred.

4. Performance, delivery, transfer of risk, delay in acceptance

4.1.

Without our prior, written consent, the supplier is not entitled to have the performance he owes rendered by third parties (e. g. subcontractors). The vendor shall bear the procurement risk for his performance if no other arrangements have been made in individual cases.

Advance deliveries and partial deliveries require our prior, written consent.

4.2.

The delivered goods must be packaged according to customary standards. The supplier is solely responsible for the precise adherence to the specified shipment and packaging regulations. The return of the packaging requires separate, written agreements.

If nothing else has been explicitly arranged, the delivery is always free of charge and to the location defined in the order. If the destination is not specified and no other arrangements have been made, the delivery must be carried out to our headquarters in Industriestraße 1-3, D 57234 Wilnsdorf-Niederdielfen. The respective place of destination is the place of performance for the delivery and any subsequent performance at the same time.

4.3.

Every delivery must include a delivery note specifying the date (issue and shipment), contents of the delivery (article number and number of articles) as well as our order ID (date, order number). If the delivery note is missing or incomplete, we shall not be responsible for the resulting delay in processing and payment. Separated from the delivery note, a corresponding notice of dispatch with the same content must be sent to us.

4.4.

The risk of accidental loss and accidental deterioration of the goods shall be transferred to us upon handover at the place of performance. Insofar as an acceptance has been agreed upon, this is decisive for the transfer of risk.

4.5.

The legal provisions are applicable in the case of default of our acceptance. The supplier must also explicitly offer us his performance even if a defined or definable calendar period is agreed for an act or contribution on our part (e. g. provision of material) is agreed. In the event that we are in default of acceptance, the supplier can demand compensation for his extra expenses in accordance with the legal provisions (§ 304 BGB). If the agreement concerns non-fungible goods that are to be produced by the supplier (for example, an individual construction), the supplier shall only be entitled to further-reaching rights if we are obliged to cooperate and are responsible for the failure to provide the assistance.

5. Prices and payment terms

5.1.
The price defined in the order is binding. All prices are in Euro including the statutory value-added tax if this is not defined separately.

5.2.
If no other provisions have been explicitly agreed in individual cases, the price shall include all services and ancillary services of the supplier as well as all ancillary costs (for example, proper packaging, transport costs including potential transport and liability insurance, customs duties etc.). If no other provisions have been explicitly arranged, we owe the agreed price within 14 calendar days from the complete delivery and service (including an agreed acceptance if necessary) as well as the receipt of a valid invoice. If we make the payment within 14 calendar days, the supplier will grant us a discount of 4 %, in case of payment within 30 days, a discount of 2 %, with regard to the net amount of the invoice. The payment will be net if made within 60 days.
In case of bank transfer the payment the payment is considered to be in time when our payment order is received by our bank prior to expiry of the payment period; we shall not be responsible for any delays by the banks involved in the payment transaction.

5.3.
We shall not owe any default interest. The legal guidelines are applicable in case of payment default.

5.4.
Payments do not mean the acceptance of the delivery or service as stipulated in the agreement. Our right to complain and our material defect claims shall not be restricted by any payment already made.

5.5.
We shall be entitled to offsetting rights and rights of retention as well as the objection of non-fulfillment of contract within the statutory limits. In particular, we shall be entitled to retain due payment as long as we have the right to assert claims against the supplier for incomplete and/or deficient performances.

The supplier shall only have the right of offset or retention in the event of legally effected or undisputed counterclaims and only up to the amount thereof.

6. Secrecy and reservation of property

6.1.
We retain the ownership and copyrights of drawings, plans, calculations, performance instructions and other product descriptions together with other documents. Such documents may only be used for the purpose of the contractual performance and must be returned to us without request following the execution of the agreement. Secrecy towards third parties must be maintained with regard to documents, even after the end of the agreement. The obligation to secrecy shall only lapse if and insofar as the knowledge contained in the documents provided has become generally known.

6.2.
The supplier is prohibited from acquiring confidential information by means of reverse engineering. Reserve engineering comprises all actions, including the observation, testing, investigation and the dismantling as well as renewed assembly with the objective of acquiring confidential information.

6.3.
The aforementioned provisions are accordingly applicable for substances and materials (e. g. software, finished and semi-finished-products), as well as for tools, templates, samples and other objects, which we provide to the producer for production. Such objects must be - as long as they are not fabricated - stored separately at the cost of the supplier and secured against destruction and loss to a reasonable extent.

6.4.
Fabrication, mixing and combining (further processing) of provided objects will be undertaken by the supplier for us. The same shall apply for the further processing of the delivered goods by us so that we are considered as producer and, according to the legal provisions, acquire ownership of the product with the further processing at the latest.

6.5.
The ownership of the goods must be transferred to imperatively and without consideration of the payment of the price. If, however, we accept an offer from the supplier for transfer of ownership conditional to the payment of the purchase price in the individual case, the retention of title of the supplier shall expire with the payment of the purchase price for the delivered goods at the latest. We also remain authorised in the orderly course of business prior to the payment of the purchase price for the reselling of the goods under advance assignment of the resulting claim (alternatively, validity of the simple and extended to the reselling retention of title). This excludes all other forms of retention of title, in particular the extended, the transferred and the retention of title extended to the further processing.

7. Deficient delivery

7.1.
The legal provisions are valid for our rights in event of material defects or legal deficiencies with regard to the goods (including wrong and short deliveries as well as improper assembly, deficient assembly or operating instructions etc.) and in event of miscellaneous breaches of duty as long as no other arrangements have been agreed.

7.2.
According to the legal provisions, the supplier shall be liable particularly for ensuring that the goods possess the agreed quality at the moment when the risk is transferred to us. All product descriptions serve as an agreement about the quality structure, which especially through designation or reference, are subjects of the respective agreement or are included in the agreement in the same manner as these AEB. It makes no difference whether the product description originates from us, from the supplier or from producers.
All goods to be delivered must be produced from appropriate, faultless material and conform to the generally accepted engineering standards, the safety regulations as well as to the agreed technical data.
The references to technical standards serve as technical specifications and shall be understand as a guaranty of quality.

7.3.
We are not obliged to inspect the goods or to obtain information about potential defects on conclusion of the agreement. Partially deviating from § 442 section 1 S. 2 BGB, we are entitled to assert unrestricted claims for defects if the defects remained unknown to us at the time of conclusion of the agreement by reason of grave negligence.

7.4.
For the commercial obligation of examination and notification of defects, the legal provisions (§§ 377, 381 HGB) shall apply with the following proviso: our obligation of examination is restricted to defects which are apparent during our incoming goods inspection including the delivery documents (e. g. transport damage, wrong and short delivery) or is detected in the scope of our randomised quality control. There is no inspection obligation insofar as an acceptance has been agreed. Moreover, it depends to what extent an inspection is feasible, taking into account the circumstances of the individual case. Our duty to notify defects detected later shall remain unaffected. Irrespective of our obligation of examination, our complaint (notification of defects) shall be regarded as immediate and timely if it has been dispatched within 14 days of discovery or on handover in case of obvious defects.

7.5.
The supplementary performance also includes the dismantling of the defective goods and the renewed installation, insofar as the goods have been installed into another article or mounted onto another article according to their type and purpose; our legal claim to reimbursement of the expenditure involved shall remain unaffected. The expenditure that is necessary for the checking and supplementary performance shall be borne by the supplier even if its turns out that there was actually no defect. Our liability for compensation in the event of unjustified rectification demand shall remain unaffected, however, only if we have detected or negligently not detected that there was no defect.

7.6.
Irrespective of our legal rights and the provisions in the aforementioned paragraph, the following applies: if the supplier is in default with regard to his obligation for rectification - according to our choice by elimination of the defect (rectification) or by the delivery of an object free of defects (replacement delivery) - within a reasonable period we have

set, we shall be entitled to rectify the defect ourselves and to and demand compensation or a corresponding advance payment from the supplier for the required expenditure for this measure. If the supplementary performance by the vendor has failed or is unacceptable for us (this includes in particular, urgency, endangerment of operational safety or threatening occurrence of disproportionate damage), there shall be no need to set a deadline; we will instruct the vendor of these circumstances without delay if this possible and feasible.

7.7.
For the rest, we shall be entitled to reduction of the purchase price or withdrawal from the agreement according to the legal provisions in the case of defects of quality or defects of title. In addition, according to the legal provisions, we have a claim to compensation for damage as well as reimbursement of expenses.

8. Supplier regress
8.1.
We are entitled to unrestricted legal regress claims within the supply chain (supplier regress in accordance with §§ 445a, 445 b, 478 BGB) beside the deficiency claims. In particular, we are entitled to demand precisely the type of supplementary performance (rectification or replacement delivery) from the supplier that we owe our customer in the individual case. Our legal option (§ 439 section 1 BGB) shall not be restricted by this.

8.2.
Before we acknowledge or amend a deficiency claim asserted by one of our customers (including reimbursement of expenses according to § 445a section 1, 439 section 2 and 3 BGB), we will notify the supplier – if this is possible and feasible - and request a written statement giving a brief account of the facts. If we do not receive a substantiated statement within a reasonable period and no mutually approved solution is found, the claim for defects actually granted by us is regarded as owed to our customer. In this case, it shall be incumbent on the supplier to provide proof of the contrary.

8.3.
Our claims for supplier recourse shall also apply if the deficient goods have been processed by us or by another company, e. g. by installation in another product.

9. Liability of the producer
9.1.
If the supplier is responsible for product damage, he shall release us from third party claims insofar as the causes originated in his domain and organization and that he himself is liable in this external relationship.

9.2.
In the scope of his indemnity obligation, the supplier must reimburse expenses according to §§ 683, 670 BGB, which arise from or in connection with the claim asserted by a third party including the recall actions carried out by us. We will instruct the supplier about the content and extent of recall measures - insofar as possible and reasonable - and give him an opportunity to make a statement. Further legal claims shall not be affected.

9.3.
The supplier must take out and maintain a product liability insurance policy with a lump-sum coverage of at least 5 million EUR per personal injury/material damage. Moreover, he must take out and maintain an insurance policy that covers the costs of any recall actions.

10. Limitation period
10.1.
The mutual claims of the contractual parties become time-barred according to the legal provisions insofar as no other subsequent arrangements have been made.

10.2.
Deviating from the regulations in § 438 BGB, the general limitation period for defect claims shall be 6 years after the transfer of risk. If an acceptance is agreed, the limitation period begins with the acceptance. The 6-year limitation period also applies for claims arising from defects of title, whereby the legal limitation period for in rem claims of third parties (§ 438 section 1 Nr. 1 BGB) shall remain unaffected; furthermore, claims arising from deficiencies in title never become time barred as long as the third party still has the right to assert claims against us, particularly in the absence of limitation.

10.3.
The limitation periods of the commercial law including the aforementioned demands are valid - to the statutory extent - for all contractual deficiency claims. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period applies (§§ 195, 199 BGB) if the application of the aforementioned regulations or commercial law does not lead to a longer limitation period in the individual case.

11. Choice of law and place of jurisdiction
11.1.
The law of the Federal Republic of Germany is valid for these AEB and applicable for the contractual relationship between us and the supplier, under exclusion of international uniform law, in particular UN sales law.

11.2.
If the supplier is a merchant in the sense of the German Commercial Code, legal entity under public law, or a separate estate under public law, the sole place of jurisdiction, also international place of jurisdiction for all disputes arising from the contractual relationship, are our headquarters in Velbert. The same applies when the supplier is a businessman in the sense of § 14 BGB.
This regulation shall also apply to the aforementioned supplier circle outside the Federal Republic of Germany insofar as equivalent provisions exist in their legal system.
In all cases, we are, however, also entitled to take legal action at the place of performance of the delivery obligation in accordance with this AVB or to file a priority individual agreement or in the general place of jurisdiction of the supplier. Priority statutory regulation, in particular, exclusive jurisdiction, remain unaffected by this rule.