General Terms and Conditions of Purchase of DKS Surface GmbH, Version: 01.04.2024

I. Orders and Conclusion of Contract

1. The following General Terms and Conditions of Purchase apply exclusively to the legal relationship between the supplier and us in the area of our purchasing. The supplier's general terms and conditions are hereby expressly rejected. Our General Terms and Conditions of Purchase also apply to all future deliveries and services from the supplier.
2. Orders, agreements, and amendments are only binding if they are issued or confirmed by us in text form. Communication must be conducted with our purchasing department. Agreements with other departments require, insofar as provisions set in the contract are to be amended, explicitly confirmed in text form by the purchasing department.
3. Every order must be confirmed by the supplier, stating the price and binding delivery time, within one week of receipt. If this period expires without result, we are no longer bound to the order.

II. Prices and Payment Terms

1. The agreed prices are fixed prices and — plus the VAT applicable at the time — are DDP (delivered duty paid) to the specified delivery location and include packaging and freight costs.
2. Unless otherwise agreed, payment will be made within 30 days with a 3% discount or within 60 days without deduction. The period begins for contracts of sale with receipt of the contractual performance, for contracts for work and services with the acceptance of the proper performance. In case of early delivery, maturity is determined by the agreed delivery date.
3. Our complete order and article numbers, as well as the cost centre, must be stated on order confirmations, dispatch notifications, invoices, and other documents. Invoices without our order and article numbers and cost centre may be returned to the supplier unpaid.
4. The supplier is only entitled to offset against our claims or to assert a right of retention if and to the extent that his claim is undisputed or has been legally established.

5. Assignment of claims to which the supplier is entitled against us is excluded without our prior written consent. The regulation of § 354a HGB remains unaffected.

III. Delivery, Delivery Period, and Delay in Delivery

1. Agreed dates and deadlines are binding. Decisive for compliance with the delivery date or delivery period is the receipt of goods by us or by the recipient designated by us.
2. The delivery note must be enclosed with the shipment. Delivery notes for consignments made on our behalf to third parties must always also be sent to us in a copy. After dispatch, the supplier must send us the dispatch notification without delay. Dispatch notifications and delivery notes must include quantity and/or weight information as well as article number, drawing revision status, and origin data.
3. As soon as the supplier becomes aware of difficulties regarding production, supply of preliminary materials, adherence to deadlines, or similar circumstances that could hinder him from delivering on time or delivering in the agreed quality, he must immediately notify our purchasing department. The obligation to observe agreed dates remains unaffected. The supplier may only invoke reasons for delay that are not his responsibility if he has fulfilled his duty of notification.
4. If the supplier is in default, after unsuccessful expiry of a reasonable grace period we are entitled to demand a contractual penalty from the supplier. This amounts to 0.5% of the purchase price or the remuneration of the delayed goods or services per week or part thereof, to a maximum of 5% of the purchase price or remuneration. Agreement on or assertion of the contractual penalty does not affect our statutory claims due to delay. Paid contractual penalties are to be offset against claims for damages. The contractual penalty can be asserted up to the payment of the delayed goods or services.
5. Partial deliveries are generally not permitted unless we have expressly approved partial deliveries or they are acceptable to us.

IV. Provided Materials

1. Materials, parts, containers, special packaging, tools, measuring devices, etc. (provided materials) supplied by us remain our property and must be stored separately by the supplier until processed. Provided materials may only be used for our orders. If provided materials are damaged or destroyed and the supplier is at fault, the supplier is liable for damages.

2. In case of processing, combining, or mixing provided materials, we acquire co-ownership of the new product in proportion to the value of the provided materials to the overall product value. Reproductions of provided materials may only be made with our prior written consent. The reproductions become our property upon creation.
3. The supplier only has a right of retention to the provided materials for undisputed, legally established, or expressly acknowledged claims by us in writing.

V. Warranty for Defects

1. We will inspect goods within a reasonable period for defects, particularly for deviations in quality or quantity. Notice of obvious defects is in any case timely if given within 14 days of receipt. Notice of hidden defects is timely if given within 14 days of their discovery. In this respect, the supplier waives the objection of a late defect notification (§ 377 HGB).
2. If the delivery item is defective, our claims are governed by statutory regulations unless otherwise provided. In cases involving operational safety risks, the risk of exceptionally high damages, or to maintain our ability to supply our customers, we may, after notifying the supplier, remedy the defect ourselves or have it remedied by a third party. Costs incurred will be borne by the supplier.
3. The supplier is liable for all direct or indirect damages or expenses incurred by us as a result of defects. Compensation includes costs for incoming inspection exceeding the usual scope if any part of the delivery is found defective. This also applies to further partial or complete inspections during business activities conducted by us or our customers.
4. The supplier shall also reimburse expenses incurred by us or our customers that are necessary for damage prevention, defense, or mitigation (e.g., recall actions). The supplier shall also reimburse expenses that we are legally obliged to bear towards our customers or that arise from defects in goods supplied by him.
5. If initial samples or reasonable random samples from a delivery deviate in whole or in significant part from contractual or legal requirements, we are entitled to withdraw from the contract entirely. Further claims for reduction or damages remain unaffected.
6. Unless a longer statutory limitation period applies, the limitation period for claims due to defects is 3 years. The period begins with receipt of delivery or acceptance. The limitation period for claims due to defects ends at the earliest 2 months after we have satisfied the claims of our customer, but at the latest 5 years after delivery to us.

VI. Product Liability / Intellectual Property Rights

1. If we are held liable under German or foreign product liability laws, the supplier will indemnify us to the extent that he would be directly liable. Contractual liability of the supplier remains unaffected. The supplier is obliged to indemnify us upon first demand from all third-party claims to the extent that the damage was caused by a defect in the goods supplied by the supplier. In the case of fault-based liability, this only applies if the supplier is at fault. If the cause of the damage lies within the supplier's responsibility, he bears the burden of proof. In such cases, the supplier will bear all costs and expenses, including the costs of possible legal proceedings or recall actions. Otherwise, the statutory provisions apply.
2. We will notify the supplier immediately if we wish to make a claim according to the above paragraph. As soon as practicable, we will give the supplier the opportunity to investigate the damage incident and to coordinate with us regarding the measures to be taken, e.g., settlement negotiations.
3. The supplier warrants that the contractual use of the goods does not infringe industrial property rights of third parties. Should we nevertheless be held liable by a third party for infringement of industrial property rights, the supplier is obliged to indemnify us from all such claims, unless the supplier is not responsible for the defect of title.

VII. Force Majeure / Extended Delivery Hindrances

1. Industrial disputes, unrest, government actions, and other unforeseen and unavoidable events such as natural disasters or pandemics release both the supplier and us from performance obligations for the duration and to the extent of their effect. The contracting parties must inform each other immediately and fully and do everything reasonable to limit the impact of such events.
2. In the case of longer-term delivery hindrance or jeopardized supplier performance, as well as in the event of initiation of insolvency proceedings or rejection due to insufficient assets or similar proceedings, either party is entitled to withdraw from the contract regarding the part not yet fulfilled. If the supplier is affected by any of these, he will, to the best of his ability, assist us in relocating the production of the delivery item to ourselves or a third party.

VIII. General Provisions

1. Place of performance for deliveries and services is the place of destination specified by us.

2. Place of jurisdiction is Montabaur, subject to a deviating exclusive place of jurisdiction. However, we are also entitled to sue the supplier at any other competent court.
3. In addition to the contractual provisions, only the law of the Federal Republic of Germany applicable to domestic parties shall apply, excluding conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Amendments and supplements to the contract, including to these General Terms and Conditions of Purchase, require text form. This also applies to amendments and additions to this clause.
5. Should any provision of these General Terms and Conditions of Purchase be or become invalid, the validity of the remaining provisions shall not be affected. In this case, the contracting parties are obliged to cooperate in the creation of provisions through which the intended result of the invalid provision is achieved as closely as possible in a legally effective manner.