



## General Purchasing Terms of Knauf Gesellschaft m.b.H.

### 1. Scope of application

The following Purchasing Terms shall apply exclusively to our orders and requests.

We shall not acknowledge any conditions issued by the supplier that differ from our General Purchasing Terms unless we have explicitly given our confirmation to comply with them in writing. Our Purchasing Terms shall apply even if we accept the delivery or the service of the supplier without reservation despite our knowledge of conditions contrary to or differing from our Purchasing Terms, or if we refer without contradiction to a letter or other comments of the supplier that contain conditions contrary to or differing from our Purchasing Terms.

### 2. Offers and offer documents

- 2.1 Orders and requests may be placed by us in writing, electronically, or by telephone. They must be confirmed by the supplier in writing without delay.
- 2.2 If the supplier does not accept the order or request within five working days of receipt thereof, we shall be entitled to cancel the order or request.
- 2.3 If the supplier accepts the order or request with deviations, it shall be obliged to clearly indicate the deviations expressly in its written order confirmation. A contract shall be deemed to have been made only if we confirm these deviations in writing.
- 2.4 Any terms, specifications, standards, and other documents attached to the order or request shall be deemed to be an integral part of the order or request.

### 3. Prices and terms of payment

- 3.1 The price stated in the order or request shall be binding. In the absence of any written agreement to the contrary, the price shall include delivery DDP (Incoterms 2010) including packaging to the delivery address indicated in our order or request.
- 3.2 The price shall include the legal value-added tax. Invoices on goods and services subject to the reverse charge system shall be issued by the supplier without value-added tax and provided with a clear advice of the "tax liability of the recipient".
- 3.3 We shall not grant remuneration of any nature for the compilation of offers, estimates, drawings, or similar items unless this is specifically agreed to in writing.
- 3.4 Unless otherwise agreed in writing, we shall pay prices within 30 days of delivery or service and receipt of the invoice with a 4% discount or we shall pay the net invoice within 60 days after delivery or service and receipt of the invoice.
- 3.5 We are able to process invoices only if they indicate the order or request number exactly according to the specifications in our order or request; the supplier shall be responsible for all consequences resulting from the failure to comply with this obligation, unless it can prove that it is not responsible for the non-compliance.

3.6 Payments shall be remitted at our discretion either by sending a crossed cheque or by transferring the amount to a bank or post office account to be indicated by the supplier. The date on which the check is mailed or the date of the bank transfer shall be the basis for the determining payment within the deadline.

3.7 The supplier shall be entitled to offset or to retain payment for claims only if the demands or claims are undisputed or legally binding. We shall be entitled to offset our claims or claims of another company of the KNAUF Group against claims of the supplier. We shall also be entitled to offset our claims against claims that the supplier has against another company of the KNAUF Group.

3.8 The supplier shall not be entitled to assign its claims against us to third parties or to have them collected by third parties without our prior written consent.

### 4. Delivery

- 4.1 Deviations from our orders and requests shall be admissible only if we have given our prior written approval.
- 4.2 Delivery or service times as well as any additional schedules and deadlines stated in the offer or request shall be binding.
- 4.3 Punctual compliance with the delivery dates shall be determined by the date of receipt of goods at the delivery address indicated in the order. For deliveries with the obligation to set up or install or to perform work, punctual compliance shall be determined by the acceptance of the installation or of the service. If "ex works" (EXW or FCA Incoterms 2010) is explicitly agreed for the delivery of goods, the supplier shall make the goods available in good time, taking into account the time required for loading and shipment to be arranged and coordinated with the forwarder.
- 4.4 The supplier shall be obliged to inform us in writing and without delay of any discernible delays of deliveries or services, stating the reasons and the estimated length of the delay, and if the information is not communicated in writing, to confirm the information immediately in writing. The supplier may cite circumstances for which it is not responsible as the reason for the delay only if it has fulfilled its obligation to notify.
- 4.5 The supplier may cite the absence of necessary documents to be provided by us for the delivery or the service only if it did not receive them within a reasonable time period after reminding us in writing.
- 4.6 In the case of delivery delays, we shall be entitled to all legal rights without reservation, particularly the right to claim compensation and the right to cancel.
- 4.7 Partial deliveries shall require our explicit consent and must be marked as such in dispatch documents and delivery notes.
- 4.8 Unless evidence to the contrary is presented, the values for quantities, weights, and measurements shall be



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those determined by us during the incoming goods inspection.

## **5. Delivery documents and packaging**

5.1 The supplier shall be obliged to quote our order or request number exactly on all dispatch documents and delivery notes; we shall not be responsible for any delays in processing for which we are not responsible.

At our request, the supplier shall be obliged to take back and duly recycle packaging free of charge. Instead of taking back the packaging, the supplier may also be requested to bear the costs of the legally required recycling of the packaging.

## **6. Place of fulfilment and transfer of risk**

6.1 The place of fulfilment for deliveries and services of the supplier shall be the delivery address stated in our order or request and the place of fulfilment for our payments shall be our registered office. If a destination has not been specified in the order, the place of fulfilment shall be our registered office.

6.2 Basically, the transfer of risk for deliveries shall occur only when the goods are delivered to the delivery address indicated by us in the order. This shall also apply to sales for delivery to a place other than the place of performance. In the case of deliveries with the obligation to set up or install or to perform work, the transfer of risks shall occur only with the acceptance.

## **7. Checking for defects and warranty**

7.1 Acceptance shall be dependent on a satisfactory examination for freedom from defects, particularly with regard to accuracy and completeness, insofar and as soon as this is feasible in the normal course of business.

7.2 Our obligation to provide notification of defects in accordance with § 377 HGB (Commercial Code) shall be considered fulfilled if we send notice of deviations in quality or quantity within seven working days of the delivery of goods to the supplier, and in the case of hidden defects, a notice within seven working days of the day on which the defects are discovered shall suffice.

7.3 The statutory provisions relating to liability for defects shall apply without reservation unless otherwise stated below.

7.4 In principle, we have the right to select the type of supplementary performance. The supplier may refuse the selected type of supplementary performance if it is possible only at disproportionately high costs.

7.5 In the event that the supplier does not start to rectify the defect immediately after our request to do so, in urgent cases, especially to avoid acute danger or greater damage, or to maintain our ability to supply to our customers, we shall be entitled to undertake such rectifications ourselves or to have them undertaken by a third party at the expense of the supplier.

7.6 In the case of defects of title, the supplier shall hold us harmless from any potentially existing third party

claims, unless the supplier is not responsible for the defect of title.

7.7 Should we incur expenses as a result of unsatisfactory delivery or service, in particular related to transport carriage, labour costs, costs of material or costs of incoming goods control beyond the normal scope of the control, then such costs shall be borne by the supplier.

## **8. Limitation period**

8.1 The limitation of claims arising out of defects or the expiry of rights arising out of defects shall be in accordance with the statutory provision. The limitation period and the expiry period shall commence with transfer of risk.

8.2 If the supplier fulfils its obligation of supplementary performance by supplying a substitute product, the statute of limitations for the substitute goods delivered shall begin after delivery or acceptance thereof, unless the supplier explicitly and appropriately performs the supplementary performance in good will to avoid disputes or in the interest of continuation of the supplier/customer relationship.

## **9. Subcontractors**

9.1 The supplier shall be entitled to assign a job for which it is responsible to third parties only with our prior written consent. The supplier shall not be entitled to the right of substitution.

9.2 If the supplier avails itself of third parties to fulfil its obligations, the third parties shall be vicarious agents of the supplier.

## **10. Quality management**

10.1 The supplier shall be obliged to constantly supervise the quality of its goods and service and to document the same. Before any delivery of goods or provision of service, the supplier shall make certain that the goods to be delivered or the services provided are free of defects and satisfy the agreed technical requirements, and shall document the same.

10.2 In advance, the supplier shall inform us in writing in due time about any modifications to the contract products, including raw material and supplies, about changes to production methods and relocations of production sites as well as about other incidents arising out of the supplier's sphere of influence which can influence the quality of the contract products. Upon request, the supplier shall guarantee to provide us samples of the affected contract products free of charge and at short notice so that we can check the effects of the changes on our formulas. The samples of the contract products must be approved by us in writing before the delivery.

## **11. Product liability, exemption, and liability insurance protection**

11.1 Should the supplier be responsible for product damages, it does hereby undertake to indemnify us from compensation claims by third parties at the first request, provided that the cause is within its scope of

control and organisation and that it is liable to third parties itself.

- 11.2 Insofar as the cause of damages falls within the area of responsibility of the supplier, the supplier shall have the burden of proof in this respect. In the case of fault-based liability, the obligation to indemnify us shall apply only if the supplier is at fault.
- 11.3 In cases falling under clause 11.1, the supplier shall assume all the costs and expenses, including the cost of any legal action and our costs ensuing from or in connection with a recall campaign. To the extent possible and reasonable, we shall notify the supplier in advance of the content and extent of a recall campaign and offer it the opportunity to cooperate with us and discuss the efficient execution of the recall campaign.
- 11.4 The supplier does hereby undertake to maintain product liability insurance for an insured sum of at least EUR 5,000,000.00 (five million euro) each for personal injury / material damage. The insurance shall also cover damages abroad (including the USA, Canada, and France). The above shall not affect further compensation claims on our part.
- 11.5 In all other matters, the provisions of the law shall apply.

## **12. Property rights**

- 12.1 The supplier shall be liable for ensuring that the property rights of third parties are not violated or detrimentally affected in connection with its delivery or service.
- 12.2 Should claims of third parties be made on us regarding a violation of property rights, the supplier shall be obliged to release us from such claims at our first request, unless the supplier is not responsible for the violation. The obligation of the supplier to release us from claims shall also apply to all expenses necessary for us in connection with the demands of third parties.

## **13. Reservation of title, free-issue material, tools**

- 13.1 We do hereby reserve title of ownership to all parts, materials, containers, special packing, tools, measuring equipment, or similar objects provided by us (free-issue material). Processing or reshaping shall be done by the supplier for us. Should such free-issue material be processed, combined, or mixed with objects not belonging to us, we shall acquire co-ownership of the newly created item in proportion to the value of our parts (purchase price plus VAT) to that of the other parts at the date of processing. If the mixture takes place in such a manner that the object of the supplier is deemed to be the main item, it is hereby agreed that the supplier shall transfer the title of co-ownership to us proportionately.
- 13.2 The supplier shall store the items of which we have sole ownership or co-ownership for us.
- 13.3 The supplier may use tools provided by us only for the manufacturing of goods or for the provision of the service ordered by us and shall mark them as our property if such a marking has not been made by us already. At its own expense, the supplier shall insure the

tools at replacement value against damages caused by fire, water, and theft. At the same time, the supplier does hereby now assign all claims for compensation arising out of this insurance to us; we do hereby accept this assignment. The supplier shall perform the required maintenance and inspection work on the tools punctually and at its own expense. The supplier shall inform us immediately of any malfunctions. Compensation claims on our part shall not be affected.

- 13.4 The terms stipulated in clauses 13.1 to 13.3 shall apply accordingly to tools produced by the supplier but which are subject to the remuneration of pro rata tool costs. For tools for which we have acquired co- ownership based on pro rata remuneration, we shall have the right of first refusal for the title of co-ownership.
- 13.5 If the security interests to which we are entitled according to clause 13 exceed the purchase price of all our goods not yet paid by more than 10%, we shall be obligated to release the security interests of our own choice at the request of the supplier.

## **14. Documentation and confidentiality**

- 14.1 The supplier shall keep in strict confidence from third parties all information provided by us such as drawings, calculations, samples, production equipment, models, data media (including features which may be derived from objects, documents and software) and other knowledge and experience, and shall use this information only for manufacturing based on our offer or request, as long as and to the extent that it is not proven to be public knowledge or explicitly released by us in writing for publication. They may be made available only to those persons in the business facility of the supplier who necessarily need to be involved in the use thereof for the purpose of delivery or service to us and who are also committed to confidentiality.
- 14.2 We do hereby reserve the title of ownership and all rights to information according to the provisions of clause 14.1 (including copyrights, and the right to register intellectual property rights such as patents, utility models, etc.). In the event that such information is provided to us by third parties, the reservation of rights shall also apply on behalf of such parties.
- 14.3 Without our prior written consent, information according to the provisions of clause 4.1 shall not be duplicated or exploited, whether directly or indirectly, except for deliveries or the provision of services to us. Any copies shall immediately become our property as soon as they are created. The supplier shall store them for us.
- 14.4 At our request, but at the latest on the completion of the order, all information provided, and if applicable, all copies and transcriptions and all objects provided on a loan basis, shall be returned to us completely and without delay, or the copies and transcriptions shall be destroyed. The supplier shall provide written assurance of the return or destruction of the same without being asked.
- 14.5 The supplier shall not be entitled to use products manufactured based on our documents, such as

drawings, models, or the like, or products that have been manufactured based on our confidential information or with our tools or tools reconstructed from our tools, itself or to offer or deliver them to any third party. This shall apply accordingly to print orders.

- 14.6 14.6 The obligation to maintain secrecy and the prohibition of exploitation shall continue to apply after execution of the contract until the information contained in the documents in question becomes public.

## 15. Export control and customs

- 15.1 The supplier shall be obliged to comply with all relevant export and/or import regulations and to obtain all required documents and approvals, in particular export approvals, customs documents, and declarations of origin, at its own expense and at its sole responsibility, and to pay all customs duties and taxes charged. The supplier shall exempt us from any demands as a result of non-compliance with export and/or import regulations.
- 15.2 The supplier shall be obliged to inform us in its business documents about any applicable licence requirements and reporting obligations necessary for the import, the use, and the re-export of the delivery items under German, European, and US export control laws and customs regulations, as well as under the export control laws and customs regulations of the country of origin of its products.
- 15.3 At our request, the supplier shall provide us any additional foreign trade data pertaining to the products and their components in written form and shall inform us immediately of any change to such data (prior to the delivery of the goods in question).

## 16. Conditions of execution of orders

- 16.1 If drawings or data in addition to those provided by us become necessary for the execution of orders or requests, the supplier shall undertake the preparation of such drawings or data without special compensation. After completion, these drawings shall be submitted to us for dimensional inspection and approval.
- 16.2 For deliveries and services, all relevant laws, regulations, and administrative as well as technical provisions such as EN and DIN standards, weights and measures laws, TIF specifications and the safety regulations of the Austrian authorities must be complied with. The supplier shall also ensure that all substances, products, preparations, or polymers (according to the definition of EC 1907/2006 REACH) inside the material or product delivered by it satisfy the legal requirements of the regulation EC 1907/2006 (REACH) and the regulation EU 528/2012 (biocide regulation). If we need further information and/or certificates for substances, products, preparations, or polymers for our own production, the supplier shall provide the information. This shall apply especially to products that are subject to labelling and registration containing SVCH (substances of very high concern) with a content of > 0.1 weight percent. In the case of a

violation of this obligation, the supplier shall exempt us from any third party claim arising from this violation, especially claims for damages. The supplier shall provide all materials and products delivered with new hazard pictograms and information in accordance with EG 1272/2008 (GHS) on time.

- 16.3 For delivery items (e.g. boiler, pressure vessel etc.) that require technical inspection and approval, the supplier shall arrange for the approval to be performed by the TÜV or any other relevant authority responsible for the approval at its own expense and shall provide us the required certificate of inspection.
- 16.4 We reserve the right to inspect the delivery items already during the production process and/or prior to shipment at the supplier's premises. Such an inspection shall not be regarded as acceptance of the goods and shall not affect our warranty rights.

## 17. Plant regulations

Persons who carry out work on our factory premises in fulfilment of the contract must observe the respective plant regulations and follow the plant security instructions without fail. Our liability for accidents suffered by these persons on our factory premises shall be excluded, except when caused by wilful or gross negligent breach of duty by our legal representatives or persons employed in the performance of our obligation.

## 18. Force majeure

We shall be released from our contractual obligations should we experience labour disputes and official interventions as well as natural disasters, riots, or other unforeseeable and inevitable events for which we cannot be held responsible and which render it considerably more difficult or impossible for us to meet our obligations (force majeure); in the case of temporary hindrance, however, we shall be released from such obligations only for the duration of the impediment plus a reasonable time period.

## 19. Data protection

We shall be entitled to save and process personal data of the supplier that has been acquired by the purchaser during the business relationship for the purposes of handling the business relationship.

## 20. Final provisions

- 20.1 Pursuant to DIN EN ISO 50001 we make reference to the fact that the evaluation of the procurement of energy services, products, and facilities that have or can have an effect on the essential use of energy is based in part on the energy-related service. This means that energy efficiency is also a determining factor in the procurement and ordering process.
- 20.2 The supplier may use the existing business relationship in its advertising only with our explicit prior written consent.
- 20.3 The court of jurisdiction for any disputes between the supplier and us arising from or in connection with any



order or request shall be the court of law responsible for our registered office. We shall also be entitled to sue the supplier at the court of law responsible for the supplier's registered office.

- 20.4 The legal relationship between the supplier and us shall be governed by the laws of the Republic of Austria to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and Austrian international private law.
- 20.5 Should individual provisions of these General Purchasing Terms be or become completely or partially void, invalid, or unenforceable, the validity and enforceability of the other provisions shall remain unaffected. The void, invalid, or unenforceable provision shall be replaced, if legally permitted, by the valid and enforceable provision that best approximates the intended purpose of the void, invalid, or unenforceable provision in terms of object, extent, time, place, and scope. The same shall apply accordingly to the filling of any gaps in these General Purchasing Terms.

Date: December 2016.