

**GENERAL TERMS AND CONDITIONS OF PURCHASE OF THE KRAUSSMAFFEI GROUP  
FOR DELIVERIES AND SERVICES FOR THE KM COMPANIES**

**1. Validity**

These terms and conditions, as well as any separate contractual agreements, form the basis of all deliveries and services for the KM companies (PURCHASER). Deviating terms and conditions of purchase, delivery and payment on the part of the CONTRACTOR are herewith already rejected. They also shall not apply if they are included in a confirmation of order from the CONTRACTOR following the order from the PURCHASER where the PURCHASER does not reject them. Even in the event of discrepancies in the previous contractual declarations or letters of confirmation from both parties, the contract shall come into effect upon execution of delivery or other performance on the part of the CONTRACTOR in each case on the basis of these terms and conditions of purchase of the PURCHASER.

**2. Order and confirmation of order**

2.1 The order from the PURCHASER shall be considered accepted if the CONTRACTOR does not object within two weeks after dispatch. The order (including appendices) issued by the PURCHASER is decisive for the scope of the order, even if it is not countersigned by the CONTRACTOR. Later verbal/telephone additions shall become effective only when the content is subsequently confirmed in writing by the PURCHASER's purchasing department.

2.2 The order shall be countersigned by the CONTRACTOR without alteration and returned to the PURCHASER. The PURCHASER reserves the right to cancel the awarded order if the PURCHASER does not receive the unaltered order within two weeks after the order date. Any technical modification vis-à-vis earlier deliveries, quotation or catalogue details, shall be reported in writing by the CONTRACTOR before acceptance of the order. The PURCHASER reserves the right, in event of considerable technical modifications, to refrain from completing the contract or – if the CONTRACTOR neglects to give timely notification – to withdraw from the contract.

2.3 For the interpretation of trade terms, the INCOTERMS in the edition valid upon conclusion of the contract shall apply.

**3. Prices, invoices and terms and conditions of payment**

3.1 The agreed prices are fixed net prices and are understood - excluding the respectively applicable VAT - as free to the agreed destination and including packaging and freight costs. Reservations with regard to price increases shall apply only with written consent from the PURCHASER. The right to acknowledge additional or reduced deliveries is reserved.

3.2 The agreed prices are payable, at discretion of the PURCHASER, net within 90 days or with 3 % discount within 30 days, calculated from the due date, receipt of a correctly issued invoice and complete delivery to or performance at the PURCHASER. Presentation of incorrect or incomplete invoices shall not initiate the payment deadline period.

3.3 An invoice must not combine several orders and must include the order and part number of the PURCHASER. Insofar as the CONTRACTOR is to provide material tests, test reports, quality documents or other documentation, completeness of the delivery and performance requires also the receipt of said documents at the PURCHASER. No later than with the invoice, the CONTRACTOR shall submit the documentary certificate of origin, fully filled in and signed, as requested by the PURCHASER. The same shall apply for evidence of VAT in the case of deliveries or performances abroad or within the EU.

3.4 Discount deduction is also permitted if the PURCHASER offsets or withholds payments of an appropriate amount on account of deficiencies; the payment deadline period shall commence after

successful remedial action. Payments shall not count for acknowledgement of the deliveries or services as conformable to the contract.

3.4 Where down payments are agreed the PURCHASER may require the issue of an absolute bank guaranty of the down payment amount.

3.5 The PURCHASER is entitled to offset against claims arising from this order with all claims to which the PURCHASER or his parent company, KraussMaffei GmbH, is entitled, together with German companies connected with the KM Group in accordance with German stock corporation law. The CONTRACTOR shall be provided with a list of these companies upon request.

3.6 The PURCHASER shall be deemed to be in default only if he does not effect payment upon demand by the CONTRACTOR after payment becomes due.

#### **4. Deadlines and nonobservance of deadlines**

4.1 The deadlines for delivery and performance stated in the order are binding. Punctuality of deliveries or subsequent performance depends upon receipt at the point specified by the CONTRACTOR, punctuality of deliveries upon installation or assembly, and of performances upon their acceptance. If the deadlines are exceeded, the CONTRACTOR shall be deemed to be in default of performance without dunning letter.

4.2 In event of recognisable delay of a delivery or performance or subsequent performance, the PURCHASER shall be notified immediately by fax of the reason for and duration of the delay and his decision obtained. To compensate for each delay, the PURCHASER can demand that the CONTRACTOR select the fastest means of dispatch without additional charge for the PURCHASER, or withdraw from the contract. Further claims on the part of the PURCHASER shall remain unaffected.

4.3 If the agreed deadline period is exceeded for reasons for which the CONTRACTOR is responsible, the PURCHASER shall be entitled to demand liquidated damages for every week started to the amount of 1 %, but no more than 10 % of the respective value of the order or call. Further claims on the part of the PURCHASER shall remain unaffected. The PURCHASER can demand liquidated damages up to the final payment, or offset against due payments, if the performance has been accepted without reservation.

#### **5. Delivery, dispatch and packaging**

5.1 Delivery is free of all expenses at the cost of the CONTRACTOR free to point of receipt. In event of agreed pricing ex works or ex sales store of the CONTRACTOR, dispatch must be at the respectively lowest costs, insofar as the PURCHASER has not specified a particular mode of shipment. In event of pricing free to recipient, the PURCHASER can likewise determine the mode of shipment. Additional costs for any accelerated shipment necessary to ensure the delivery deadline is observed shall be borne by the CONTRACTOR.

5.2 Each dispatch shall be reported to the PURCHASER immediately and in duplicate. The dispatch note and delivery note must bear the PURCHASER's order no. and part no., and the internal contract no., and must also indicate the weight and type of packaging. The PURCHASER is entitled to reject at the cost of the CONTRACTOR any deliveries not correctly executed or indicated.

5.3 Deliveries shall be made only from Monday to Friday (excluding public holidays and company closures) from 8 a.m. to 4 p.m.

5.4 The costs of packaging shall be borne by the CONTRACTOR. Disposal of the packaging material shall be the responsibility of the PURCHASER.

## **6. Transfer of risk and ownership**

6.1 The risk of accidental destruction and accidental deterioration of the goods shall be borne by the CONTRACTOR for deliveries up to receipt at the point of receipt specified by the PURCHASER. In the case of deliveries with installation or assembly and of performances, the risk shall be transferred upon acceptance. If the delivery is returned as a result of a warranty claim, the risk shall be transferred to the CONTRACTOR upon completion of the return shipment.

6.2 Ownership shall be transferred to the PURCHASER upon completion of the unloading procedure at the point of receipt and presentation of the delivery note.

## **7. Incoming/outgoing goods inspection, time limit for a claim**

The CONTRACTOR shall send only detail-tested and successful parts, and therefore waives a detailed incoming goods inspection at the PURCHASER. The PURCHASER shall check immediately after receipt whether the deliveries are of the ordered quantity and type, and whether any externally detectable transportation damage or faults are visible. The PURCHASER shall immediately notify the CONTRACTOR of any such visible deficiencies. The PURCHASER shall give notice of latent deficiencies within 14 days after their ascertainment. No inspections or reports beyond those stated above shall be incumbent upon the PURCHASER vis-à-vis the CONTRACTOR.

## **8. Liability for deficiencies**

8.1 The CONTRACTOR shall guarantee that his delivery/performance is faultless, is suitable for the agreed purpose, meets the agreed quality specifications and fulfils all aspects of warranty stated in the order. In the case of parts subject to wear and tear, the CONTRACTOR shall guarantee at least that such parts will withstand without fault the usual number of operating hours, and a minimum of 12 months. The CONTRACTOR shall guarantee that his delivery/performance conforms with the state of the art, the specifications and directives from the legislator, the supervisory authorities and trade associations and the VDE (German Association of Electrical Engineers) with regard to design, accident prevention and environmental protection, and that he has successfully completed all environmental compatibility tests specified for the product type.

8.2 Insofar as the law does not require a longer period, the warranty period shall be 24 months from acceptance of the performance or the overall system by the PURCHASER's customer, or a maximum of 36 months from delivery to the PURCHASER. For parts redelivered and improvements carried out in the course of subsequent performance, the deadline shall be 24 months from delivery or installation of the replacement part or completion of the improvement work. The warranty period shall be extended by periods corresponding to out-of-service periods of the PURCHASER's product resulting from deficiencies and remedial action on the part of the CONTRACTOR.

8.3 If deficiencies are determined before or upon transfer of risk, or occur during the period specified in Paragraph 8.2, the PURCHASER shall be entitled to demand from the CONTRACTOR delivery of a faultless product or remedial action, as desired by the PURCHASER, as subsequent performance at the CONTRACTOR's cost. This shall also apply to deliveries for which inspection was restricted to spot checks. The PURCHASER's selection shall be made in accordance with reasonably exercised discretion. All costs and expenses (including the installation and removal costs at the PURCHASER's product, the provision of fitters or auxiliary agents required, travel costs, and costs for transportation and disposal) shall be borne by the CONTRACTOR. The return of deficient deliveries shall be at the cost and risk of the CONTRACTOR.

8.4 In event of urgency (e.g. to avoid default on the part of the PURCHASER or to prevent disproportionate damage), default on the part of the CONTRACTOR in delivery or subsequent performance, unacceptability of subsequent performance or refusal on the part of the CONTRACTOR to carry out subsequent performance immediately, the PURCHASER shall be entitled to eliminate the deficiencies himself at the cost of the CONTRACTOR. Insofar as possible and acceptable, the

PURCHASER shall notify the CONTRACTOR in advance and request his presence. The warranty obligations on the part of the CONTRACTOR shall remain unaffected by the substitutive performance.

8.5 Should the substitutive performance not result in success, or if it is not possible or acceptable, or if the CONTRACTOR is in default or fails with his subsequent performance, the PURCHASER shall be entitled to select between withdrawal of the contract or reduction of delivery price. Further legal claims, for example on account of the nonobservance of assumed warranty or for damages, shall remain unaffected.

8.6 All warranty claims are subject to a statutory limitation period of 24 months, commencing with notification of the deficiency, but not before the end of the warranty period as specified in Section 8.2. Notification of the deficiency interrupts the statutory limitation period for the reported deficiency. Further or other legal claims shall remain unaffected by the provisions stated in Paragraph 8.

## **9. Spare parts**

The CONTRACTOR shall ensure the availability of all assemblies and spare parts important for the delivery/performance for a period of 10 years from delivery. If the CONTRACTOR violates this obligation, the PURCHASER shall be entitled to copy or manufacture the no longer available component at the CONTRACTOR's expense. The CONTRACTOR shall hereby support the PURCHASER in every respect, for example by providing manufacturing drawings and granting any required industrial property rights.

## **10. Product liability**

10.1 The CONTRACTOR shall release the PURCHASER from claims for damages which are asserted against the PURCHASER on account of a product liability for which the CONTRACTOR is also responsible, and upon request shall provide the PURCHASER with evidence of sufficient product liability insurance.

10.2 If insurance evidence is not forthcoming or if the CONTRACTOR refuses to effect an appropriate increase to the amount insured as suggested by the PURCHASER, the PURCHASER shall be entitled to withdraw from the contract and claim damages.

## **11. Industrial property rights**

The CONTRACTOR shall ensure that the contractually agreed use does not conflict with industrial property rights, including copyright. In event of violation of the rights of third parties, the PURCHASER shall be entitled to withdraw from the contract and the CONTRACTOR shall be liable for damages (including the costs of legal defence and legal proceedings). The CONTRACTOR shall release the PURCHASER from all claims on the part of the respective holder of industrial property rights. The contractor shall modify the delivered product in such a manner acceptable to the PURCHASER that the industrial property rights are no longer violated. The PURCHASER can also acquire all necessary rights to use at the CONTRACTOR's cost.

## **12. Drawings, documents, secrecy**

12.1 Drawings, data sheets, printer copies, gauges, models, forms, samples, profiles, tools and all other documentation submitted to the CONTRACTOR for preparation and execution of the order, as well as the know-how embodied therein, shall remain the exclusive property of the PURCHASER and shall not be made available to third parties, nor be used for purposes other than those stated in the contract, without the written consent of the PURCHASER. All of the above-stated shall be treated with the strictest confidentiality and returned to the PURCHASER immediately upon request. The above-stated shall be looked after carefully, kept safely and insured against damage and loss by the CONTRACTOR at his own cost. Repairs and modifications shall require written consent from the PURCHASER.

12.2 The PURCHASER reserves all rights to drawings and products produced according to his specifications. Ownership of tools and other means of manufacture paid for by the PURCHASER shall be transferred from the CONTRACTOR to the PURCHASER upon payment.

### **13. Assignment of claims and special right of termination**

13.1 The assignment of payment claims arising from the contract require prior written consent from the PURCHASER. Any infringement shall entitle the PURCHASER to full or partial withdrawal from the contract, as well as to damages.

13.2 If the CONTRACTOR discontinues his payments, a provisional insolvency administrator is appointed or insolvency proceedings are opened on the assets of the CONTRACTOR, the PURCHASER shall be entitled to withdraw fully or in part from the contract. In event of withdrawal, the PURCHASER shall be entitled to use existing facilities for continuation of the work, or use effected deliveries and performances by the CONTRACTOR in return for appropriate payment.

### **14. Miscellaneous**

14.1 The engagement of subcontractors or suppliers requires prior written consent from the PURCHASER. Such consent shall not affect the liability on the part of the CONTRACTOR vis-à-vis the PURCHASER.

14.2 The PURCHASER shall store electronically the data necessary for carrying out the order. By accepting the order, the CONTRACTOR declares himself in agreement hereto.

14.3 The CONTRACTOR shall treat the conclusion of the contract as confidential, and shall not refer to the order in advertising without prior consent from the PURCHASER.

14.4 The PURCHASER shall be entitled to review the status of manufacture and request information on the work status during the CONTRACTOR's usual business hours.

14.5 The CONTRACTOR shall notify the PURCHASER immediately if his delivery/performance is subject, fully or in part, to import or export restrictions in accordance with German or other law.

14.6 The place of fulfilment for the deliveries and performances is the place of use, for payments the place of the PURCHASER.

14.7 Unless otherwise specified in these terms and conditions of purchase, the legal provisions of the Federal Republic of Germany shall apply. The exclusive place of jurisdiction is the place of the headquarters of the PURCHASER. The PURCHASER shall be entitled to institute legal proceedings also at the headquarters of the CONTRACTOR.

14.8 In the event of individual provisions being invalid, the remaining provisions shall remain binding.