



Kulzer General Terms of Purchase 07/2017

1 Scope

All purchase orders (deliveries of goods and provision of services) of the respective Kulzer group company ("Kulzer") are subject to the following General Terms of Purchase ("GTP") only. These GTP apply also to future purchase orders of Kulzer. Kulzer objects to general terms and conditions of the supplier which deviate from these GTP or the provisions of law except where Kulzer gives its express prior written consent to the applicability of the supplier's general terms and conditions. The supplier's general terms and conditions will also not become part of a contract between Kulzer and the supplier even if Kulzer, although being aware of the supplier's deviating or contravening terms and conditions, takes delivery of goods, accepts services or effects payment for such deliveries or services.

2 Offer and Formation of a Contract

2.1 All orders, agreements and changes shall be binding only if placed or confirmed by Kulzer in writing. All correspondence must be exchanged with the purchasing department of Kulzer.

2.2 Orders placed by Kulzer without a time limit for acceptance may be accepted by the supplier only within fourteen (14) days from the order date.

2.3 Quotations are binding and non-refundable unless otherwise expressly agreed in writing.

2.4 In case of any deviation or variance between the supplier's order confirmation and Kulzer's purchase order, a contract shall be formed only if the supplier has expressly advised Kulzer of the deviation and Kulzer has agreed to such deviation in writing.

3 Examination and Procurement Duties

3.1 Within the scope of its general and special professional knowledge, the supplier shall examine all drawings, calculations, specifications and other terms of reference provided by Kulzer for errors and inconsistencies on its own initiative and shall report to and clarify with Kulzer all concerns or objections, if any, promptly in writing.

3.2 The supplier bears the procurement risk of the goods.

4 Delivery; Supplier's Lien; Security in the Supply Chain

4.1 The period of delivery/performance specified by Kulzer in the purchase order is binding. If the purchase order does not specify such period, delivery of the goods or performance of the service, respectively, shall be effected within fourteen (14) days after the date of the purchase order.

4.2 If the supplier is unable to comply with the binding period of delivery/performance, set forth in clause 4.1, the supplier shall notify Kulzer promptly and advise a practicable date for the delivery/performance. In addition, the supplier is committed to notify Kulzer without request of any difficulties in delivery/performance which may arise, for any reason whatsoever, immediately after such difficulties have come to the supplier's knowledge.

4.3 The supplier is obligated to strictly comply with all instructions and requirements of Kulzer as regards mode of transport, forwarding agent, and shipping instructions.

4.4 All deliveries and services shall be effected DDP "Point of Use" (Incoterms 2010). If delivery is made to construction sites or directly to third parties, unloading shall be at the cost and risk of the supplier.

4.5 Partial deliveries are permissible only with the express written consent of Kulzer, which consent shall not be unreasonably withheld.

4.6 The supplier is committed to attach to each shipment a delivery note exactly specifying the contents of the shipment, the net weight per item, and the complete SAP purchase order number of Kulzer.

4.7 The unconditional acceptance by Kulzer of a late delivery or late performance does not constitute a waiver by Kulzer of any compensatory claims arising to it from such late delivery or late performance; the foregoing shall apply until Kulzer has fully settled all payments owed by it for the goods or services so affected.

4.8 With regard to quantities, weights and dimensions, the figures determined by Kulzer during its incoming inspection shall be controlling, unless otherwise evidenced by the supplier.

4.9 The supplier shall provide reasonable assistance to Kulzer in obtaining preferential tariffs and other governmental benefits and submit to Kulzer all supporting records and documents, especially certificates of origin, which are requested by Kulzer for this purpose.

4.10 If any payment instruments, shipping documents, certificates of origin or sales tax vouchers are missing, improper or incorrect, Kulzer reserves the right to refuse acceptance of the goods at the supplier's cost and risk.

4.11 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges, unless otherwise agreed.

4.12 Any contractual liens and reservations of title by the supplier are subject to a separate written agreement between Kulzer and the supplier.

4.13 The supplier shall give all organizational instructions and take all organizational measures, in particular in the areas of property protection, security of business partners, personnel and information, as well as in the areas of packaging and transport, which are required to ensure security in the supply chain, for example by adopting the requirements of internationally accepted initiatives on the basis of the WCO SAFE Framework of Standards (especially AEO). The supplier shall protect its deliveries of goods to and the performance of its services for Kulzer against unauthorized access and manipulation and shall have such

deliveries and services performed by reliable personnel only. The supplier shall obligate any subcontractors commissioned by it to give corresponding instructions and to take corresponding measures.

4.14 The supplier represents and warrants that the goods do not contain any substances which are restricted by Directive 2011/65/EU (RoHS), that the substances which are contained in the goods and its use(s) are either already registered or not subject to registration in accordance with the Regulation (EC) No. 1907/2006 (REACH) and, if necessary, that an authorisation in accordance with the REACH Regulation has been granted. The supplier shall prepare the safety data sheet pursuant to Annex II of the REACH Regulation, if required, and provide them to Kulzer. If the goods delivered are to be classified as dangerous goods within the meaning of the applicable international rules, standards and guidelines, the supplier must notify Kulzer thereof no later than on the date of the order confirmation.

4.15 Kulzer retains title to, and ownership of, any and all items, such as substances, tools, materials and other items, which are provided by it to the supplier for manufacturing purposes. As long as they are not processed, any such items must be stored separately and insured at replacement value against loss and destruction at the supplier's cost. The processing, blending or combining (further processing) of any such items by the supplier is made on behalf of Kulzer. The same applies to the further processing by Kulzer of the goods delivered to it, so that Kulzer is deemed to be the manufacturer and obtains ownership of the product so manufactured.

4.16 Title to, and ownership of, the goods shall be transferred to Kulzer unconditionally and regardless as to whether the purchase price has been paid. If, in the individual case, Kulzer accepts an offer from the supplier for the transfer of ownership of goods which is conditional upon payment of the purchase price, the supplier's reservation of title shall lapse upon payment of the purchase price of the goods at the latest. In such case, Kulzer is authorized to resell the goods in the ordinary course of business also prior to the payment of the purchase price on the condition that Kulzer assigns to the supplier in advance the purchase price claims arising from such resale (application of the simple reservation of title extended to resale). In any case, all other forms of reservation of title are excluded, in particular the expanded and the assigned reservation of title, as well as the reservation of title extended to further processing.

5 Force Majeure

Acts of God, labor disputes, operational breakdowns through no fault or negligence of Kulzer, civil disturbances, actions by any governmental authority and other events or circumstances beyond Kulzer's control will entitle Kulzer - notwithstanding any other rights or remedies available to it - to rescind the contract in whole or in part if such circumstances or events continue for a significant period of time and result in a substantial decrease in Kulzer's demand.

6 Contractual Penalties

6.1 In the event that the supplier defaults in the timely performance of its duty to deliver/provide a service, Kulzer may claim a contractual penalty at the rate of 0.5% of the aggregate order value for each commenced calendar week of the supplier's default, but no more than 5% of the aggregate order value. This shall not apply if the supplier furnishes valid proof that the default was caused by reasons beyond the supplier's control.

6.2 The contractual penalty pursuant to clause 6.1 shall be incurred as soon as the supplier defaults in delivery. The contractual penalty is immediately due for payment.

6.3 Kulzer may assert the contractual penalty in addition to its claim for performance of the supplier's duty to deliver. If Kulzer accepts the supplier's delayed performance, Kulzer may claim the contractual penalty also if it has not expressly reserved this right at the time of receipt of delivery. Kulzer shall declare the reservation of its right to assert the contractual penalty no later than at the time of its final payment of the delivery concerned. This declaration may be given on a printed form.

6.4 The assertion of any further damage by Kulzer shall not be excluded, but the contractual penalty pursuant to clause 6.1 shall be set off against any such further damage.

7 Claims for Defects; Recourse and Product Liability; Insurance

7.1 The supplier is responsible for the perfect condition of the goods delivered and the services provided and for the existence of warranted characteristics. The supplier is in particular responsible for the conformance of the goods and services to the state of the art, to the generally accepted technical and occupational health and safety regulations of public authorities and trade associations, and for the compliance of the goods and services with all applicable laws.

7.2 Kulzer's duty to examine and give notice of defects shall be subject to the statutory provisions with the following proviso: Kulzer's duty to examine is limited to defects which become apparent upon outward examination of the goods, including the shipping documents, during the incoming inspection and to defects which become apparent during quality control by way of random sampling (such as damage to the goods during transport, wrong delivery and short delivery, for example). The duty to examine shall not apply if acceptance of the goods delivered has been agreed. Above and beyond the foregoing, it depends on the feasibility of such an inspection in the ordinary course of business, with due regard to the circumstances in the individual case. Kulzer's duty to give notice



of defects which are discovered later remains unaffected. In all cases a notice of defects shall be deemed to have been given promptly and timely if it is delivered to the supplier within a period of fourteen (14) calendar days.

7.3 The statutory provisions on material defects and defects of title shall apply, except as otherwise provided hereinbelow.

7.4 If the supplier, within the scope of subsequent performance of the contract, remedies a defect by rectification or by delivery of a faultfree product, the statutory warranty periods will commence to run again.

7.5 If the supplier defaults in its duty of subsequent performance of the contract within a reasonable time period fixed by Kulzer without having the right to refuse such subsequent performance, Kulzer is entitled to itself remedy, or cause to be remedied by any third party, the defect at the cost of the supplier and to claim from the supplier an advance payment of the costs thereby incurred.

7.6 All costs arising to Kulzer from the supplier's delivery of defective goods or provision of defective services, especially travel and transport expenses, labor and material costs, and the costs of an incoming inspection exceeding the usual scope, shall be borne by the supplier. Any costs incurred by the supplier for the examination and rectification of defects (including any removal and installation costs) shall be borne solely by the supplier even if it turns out that there was actually no defect. Kulzer shall be liable to pay damages to the supplier for unjustified claims for remedy of a defect only if Kulzer has recognized, or grossly negligent failed to recognize, that no defect existed.

7.7 The supplier is obligated to indemnify and hold Kulzer harmless from and against any and all product liability claims, and from any loss or damage arising therefrom, if and to the extent that such claims are attributable to a defect in the goods delivered/manufactured or the services provided by the supplier. If a product liability claim under strict liability should be asserted or entered against Kulzer, the foregoing shall apply only if the supplier is at fault. If the cause of the loss or damage is within the responsibility of the supplier, the burden of proof shall rest on the supplier. The supplier shall refund also any and all necessary costs and expenses to the extent of the supplier's indemnity obligation, including the costs of bringing an action or the costs generated by a product recall. Kulzer will inform the supplier of the scope and content of such product recall to the extent practicable and reasonable.

7.8 The supplier is obligated to take out and maintain a product liability insurance with adequate coverage and to furnish proof of the existence of such insurance to Kulzer upon request.

7.9 The mutual claims of the contracting parties against each other become barred by the statute of limitations in accordance with the statutory provisions unless otherwise specified below. The general limitation period for claims for defects is three (3) years from the passing of the risk or acceptance, if acceptance should be required.

7.10 The statutory limitation periods governing the sale of goods, including of the foregoing extension, apply within the legal limits to all claims for defects. If Kulzer is entitled to extra-contractual claims for damages, such claims shall be subject to the regular statutory limitation periods, unless the application of the statutory limitation periods governing the sale of goods results in a longer limitation period in the individual case.

8 Infringement of Third Party Property Rights

The supplier warrants that no patent rights or other intellectual property rights of any third party are infringed by or in connection with the supplier's delivery of goods or provision of services, and the supplier will, upon first written request, indemnify and hold Kulzer harmless from and against any and all claims which are asserted or entered against Kulzer by any third party on account of the infringement of a patent or other property right. The supplier will reimburse Kulzer for all necessary costs and expenses arising to Kulzer out of or in connection with such third party claims. Irrespective of the foregoing, Kulzer shall be entitled to enter with any third party into agreements on the alleged infringement of property rights, especially compromise settlement agreements, also without the consent of the supplier.

9 Prices and Terms of Payment

9.1 The prices specified in the purchase orders are binding. These prices include any and all services and ancillary services provided by the supplier (such as mounting and installation, for example) as well as all ancillary costs (such as packaging, transport and transport and liability insurance). The supplier shall take back packaging materials at the request of Kulzer.

9.2 All invoices must specify the SAP purchase order number of Kulzer, the exact description and quantity of the goods delivered or services provided, and the price per unit or quantity. All invoices must be sent to the address specified in the purchase order.

9.3 Unless otherwise agreed between the parties, the agreed prices become due and payable within sixty (60) calendar days after full performance of the delivery and/or service (as well as acceptance, if applicable) and receipt of a proper invoice. If the invoice is paid within fourteen (14) calendar days, the supplier shall grant a 3% discount on the net invoice amount.

9.4 There shall be no interest payable from the due date unless Kulzer is in default. The rate of interest for default is five (5) percentage points p.a. above the applicable base rate of the European Central Bank. The commencement of default in payment is generally governed by the statutory provisions. However, a written reminder for payment from the supplier is required in each case.

9.5 Rights of setoff and rights of retention as well as the defense of non-per-

formance of the contract shall be due to Kulzer within the statutory scope. In particular, Kulzer is entitled to withhold payments due for so long as Kulzer has claims against the supplier from incomplete or defective deliveries and/or services.

10 Industrial Property Rights and Know-How

10.1 All right, title and interest in and to any models, samples, drawings, software, documentations and other records as well as all right, title and interest in and to any materials, tools, production and testing equipment and know-how disclosed or released by Kulzer to the supplier shall remain vested solely in Kulzer. Any such items, information and documents must be treated as confidential and may not be transmitted to any third party, unless with the express prior written consent of Kulzer and unless such third party is bound by the same obligations of confidentiality.

10.2 All items, information and documents set forth in clause 10.1 must be returned to Kulzer, without request, immediately upon performance of the contractual obligation or when they are no longer required by the supplier. Any other use or disposal, whether in fact or in law, and/or any direct or indirect exploitation of such rights, items and documents by the supplier or any third party is expressly prohibited.

10.3 If the supplier owns any intellectual property rights that cover the application of the products or the results of work delivered, or which are necessary for the use of such products or results of work, the supplier shall grant to Kulzer a corresponding irrevocable, worldwide, royalty-free license, whereby the agreed remuneration for the delivery concerned shall fully settle all and any fee that might be due for such shared usage in the course of use or exploitation of such products or results of work, or of important parts thereof to the extent required. This license shall expressly include Kulzer's right to grant sub-licences to third parties, to the extent to allow the use and exploitation of the products and/or results of work delivered.

10.4 In the case of research, development, construction, engineering or other contracts covering the elaboration of a solution to a technical problem, Kulzer shall be assigned, with respect to the results of such work in whole or to a substantial extent, an exclusive, irrevocable, worldwide and royalty-free right to exploit such work, which shall be transferable and covered by the remuneration paid for delivery. If the results of such work are wholly or partly protected by copyright, the supplier shall grant Kulzer exclusive, irrevocable, transferable rights, unlimited by time, place or content, to use these results of work in any manner whatsoever, with particular reference to the right to copy, amend and alter/edit the items concerned. Kulzer shall have the right of first refusal to acquire any intellectual property rights relating to all and any inventions made in the course of such work carried out by the supplier and/or its employees, or carried out jointly with employees of the supplier. The supplier shall notify Kulzer immediately of all and any inventions that are disclosed or which otherwise come to its notice, and offer their transfer to Kulzer free of charge. The supplier shall be solely responsible for remunerating its own employees in accordance with corresponding legislation covering inventions made by employees. The supplier agrees, at its own expense, to provide assistance and submit any declarations that may be necessary for the obtaining or granting of such intellectual property rights. If Kulzer is not interested in acquiring such rights, the supplier may apply for such legal protection on its own behalf and at its own expense, while granting Kulzer a non-exclusive, irrevocable, worldwide, royalty-free license to all intellectual property rights that are based on the invention concerned. If the supplier intends to drop any of such intellectual property rights, it shall previously contact Kulzer in writing to offer a corresponding free transfer of rights.

10.5 If the supplier makes use of a subcontractor, it must likewise ensure that this party recognises Kulzer's rights as defined in sections 10.3 and 10.4.

11 Kulzer Code of Conduct

By acting responsibly Kulzer wishes to strengthen its good reputation. The principles for responsible action are laid down in the Kulzer Code of Conduct. The supplier commits to comply with all legally binding rules and regulations. This applies in particular to the applicable laws for the protection of fair competition, the export and import prohibitions, the customs and tax regulations, and all rules and regulations for the protection of the environment. The supplier covenants, in particular in its business transactions with Kulzer, not to engage in any bribing of business partners, modern slavery or child labor and to ensure for its own staff a fair pay, appropriate working hours, safety at work and a non-discriminating working environment.

12 Miscellaneous

12.1 The place of performance for all payments between Kulzer and the supplier is the registered place of business of Kulzer.

12.2 These General Terms of Purchase and any agreement between Kulzer and the supplier shall be governed by and construed in accordance with the law applicable at Kulzer's place of business, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).

12.3 The place of jurisdiction, also for actions on checks and bills of exchange, shall be the domicile of Kulzer. However, Kulzer shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Kulzer's place of business or under the laws of the country in which the supplier has its registered place of business.