

# General Terms and Conditions of Purchase Kahlbacher Machinery GmbH (Version EU)

## 1. Scope and Validity

These "General Terms and Conditions of Purchase" apply, unless expressly agreed otherwise in writing between the parties, to all orders (deliveries and services) placed with Kahlbacher Machinery GmbH (hereinafter referred to as "Kahlbacher"). The version valid at the time of contract formation is relevant in each case. § 11, E-Commerce Act is waived expressly.

Any in-house terms of delivery or general terms and conditions of the supplier are deemed excluded by mutual agreement and consequently are not part of the contract unless Kahlbacher expressly agrees to their application in writing. The above-mentioned provision also applies if these terms and conditions are included in the business documents, the quotation or the terms of delivery of the supplier and Kahlbacher fails to object to them again, and also if the supplier announces that he only intends to contract using these terms and conditions as a basis.

## 2. Quotations

All quotations of Kahlbacher are always subject to alteration and non-binding. Purchase orders have to be confirmed without delay. The prices specified in the purchase order are always fixed prices unless expressly agreed otherwise.

Quotations or cost estimates of the supplier are binding and free of charge unless expressly agreed upon otherwise. Suppliers are bound by the quotations or cost estimates made by them for a period of at least eight weeks from receipt of this quotation by Kahlbacher.

## 3. Delivery

Agreed terms and dates of delivery are binding and start to run upon receipt of the purchase order by the supplier. Place of performance for deliveries and services is always the place of business of Kahlbacher unless expressly agreed otherwise. Kahlbacher has to be notified of any delivery delays immediately, the reasons for them having to be given. For compliance with the period or date of delivery with regard to goods, receipt by Kahlbacher, and with regard to services, the day on which the work is completed is relevant.

The supplier is always obliged to recompense any damage caused by delay. Kahlbacher's right to rescind without having to fix further periods of grace by way of a simple declaration in case of delivery delays remains unaffected thereof. If Kahlbacher adheres to the contract, a contractual penalty not to be qualified as forfeit money is deemed agreed in the event of delays. It is 1% of the total order value for each calendar day commenced, but not more than 15% of the total order value.

The supplier is obliged to perform a final outgoing goods control. This outgoing control of the products to be performed by the supplier serves the same purpose as a comprehensive incoming goods control to be performed by a buyer according to § 377, Austrian Commercial Code (UGB).

The supplier has to perform a final control which always has to comprise an inspection for compliance with the agreed product requirements on each product. The inspected products and packaging units have to be marked.

The supplier has to take all suitable and necessary measures without delay if the result of the inspections does not fulfil the requirements.

Considering the quality management system and the outgoing goods control performed by the supplier, the contracting partners agree that an incoming control of the delivered goods by Kahlbacher only has to be carried out with regard to incorrect deliveries, quantity deviations and visible damage to the delivered products.

The supplier agrees with the fact that a further incoming goods control does not have to be performed by Kahlbacher and that the supplier shall not assert his rights in that regard pursuant to § 377, UGB. The supplier is aware of the fact that and acknowledges that Kahlbacher is not able to perform technical tests of the products in particular due to functional and technical reasons.

Kahlbacher has the right to refuse acceptance of deliveries delivered before the agreed delivery date and to return the goods that were delivered too early at the supplier's costs and risk, or to put them in storage with third parties. Partial deliveries always have to be marked as such and the residual quantity still to be delivered has to be specified.

#### 4. Transportation - Risk of Loss

For lack of an express, mutual agreement, the supplier shall bear the costs and the risks involved in transportation for deliveries. Any confirmations of receipt issued by Kahlbacher shall only be deemed acknowledgement of the receipt of goods, but not of proper contract performance.

#### 5. Price (Purchase Price, Fee)

For lack of other express agreements, the prices that Kahlbacher is given are including all charges and additional costs and transportation costs. Agreed prices and/or prices on which the contract is based are deemed fixed prices; price adjustment clauses and the like will not be accepted unless they are expressly negotiated separately.

Kahlbacher is expressly authorised to offset any outstanding accounts of the contracting partner, if applicable.

#### 6. Terms of Payment (Due Date, Partial Payment, Cash Discount)

Payments have to be made as agreed, otherwise within 60 days of receipt of the respective original invoice. When payments are made within 14 days from receipt of invoice, Kahlbacher is entitled to a discount to the amount of 3%. Payments are not to be deemed acceptance of the appropriateness of the delivery/service or a waiver of any claims. Cessions shall always require Kahlbacher's previous written consent.

Terms of payment start to run on the day on which the original invoice is received, but not before acceptance of the service or receipt of the delivery by Kahlbacher. Agreed due dates for payments will be postponed accordingly in case of delays regarding delivery or service.

If the payment is done in instalments as agreed upon, Kahlbacher shall not forfeit the discount for partial payments made in time even if other partial payments are not made within the discount period and/or at the due date.

#### 7. Unilateral Performance Changes

Changes to our performance requirement and/or purchase order that are justified from an objective point of view and reasonable have to be tolerated by the supplier insofar as this does not result in a price and/or fee increase exceeding 5% of the gross total order amount in total.

#### 8. Cancellation Fees/Forfeit Money

Kahlbacher has the right to rescind the agreement against payment of a cancellation fee (forfeit money) to the amount of 3% of the gross total order amount without having to give any reasons (§ 909, Austrian General Civil Code). However, if the damage incurred by the supplier as a result of contract cancellation is actually smaller, only this amount – again against suitable evidence - has to be reimbursed.

#### 9. Warranty and Compensation for Damages

We have the right to give notice of apparent and covert or hidden defects within a reasonable period of time. Regarding apparent defects, 30 days from acceptance of the service, regarding covert or hidden defects, 30 days from discovery of the defect shall be deemed reasonable. In particular, defects that are only discovered when the delivery is used, for example because of the packaging or the procedure shall be deemed covert and/or hidden. Under no circumstances shall mere acceptance of defective goods be deemed approval, warranty rights and other claims shall remain unaffected by acceptance and failure to give notice of defects.

Disclaimers of liability on the part of the supplier, in particular from the title of warranty or compensation for damages, will not be accepted unless they were negotiated expressly in the individual case.

In case of defects, it is within Kahlbacher's discretion to choose between replacement, repair or price reduction unless there is a right to rescind. In case of repair or replacement, Kahlbacher has the right to withhold the entire payment until complete performance of the service/delivery to be carried out.

As for the rest, any deviations from the statutory damage compensation and warranty provisions - in particular changes regarding burden of proof or the shortening of terms - require Kahlbacher's express written consent in order to be valid.

The exclusion of the right of recourse pursuant to § 933b, ABGB, and recourse claims pursuant to PHG [Austrian Product Liability Act] is not accepted.

In case of justified complaints, we have the right to withhold the entire payment that is still outstanding.

## 10. Protection of Plans and Documents / Non-Disclosure

Plans, sketches and other documents such as leaflets, catalogues, samples, presentations and the like that are made available by us remain our intellectual property and must not be used for other purposes or made accessible to third parties. Any use, in particular the passing on, reproduction, publishing and making available, including the copying of just extracts from them, requires our express written consent.

All documents specified above may be claimed back by us at any time, and always have to be returned to us without delay and unprompted when no contract is entered into with the supplier. As for the rest, the supplier undertakes to treat the know-how made available to him in the course of the business relationship confidentially, in particular vis-à-vis third parties.

If our contracting partner prepares documents or services and makes them available to us and these are protected by law, including copyrights, he grants us in case of contract formation, for lack of other agreements to the contrary, an unlimited, but not exclusive right of use for these works and/or such a right is deemed agreed.

## 11. Formal Requirements and General Provisions

Any and all agreements, subsequent changes, amendments, ancillary agreements, etc. require the written form in order to be valid, and therefore also the original signature or the secure electronic signature. The above-mentioned provision also applies to any subsequent waiver of this written form requirement.

Should one of the provisions of these terms and conditions be or become invalid, the validity of the remaining provisions and the validity of the contract based on them remains unaffected thereof. The contracting partners are obliged to replace the invalid provision by provisions that come as close as possible to the intended financial result.

The supplier shall be liable for any and all claims made during contractual use of his delivery or services based on the violation of copyrights and intellectual property applications. The supplier shall keep Kahlbacher and his customers indemnified from all such claims. Kahlbacher is obliged to notify the supplier of all violation risks and alleged violations that have become known without delay and to give him the opportunity to counter such claims by mutual agreement.

## 12. Choice of Law

All contracts between Kahlbacher and the supplier are subject to Austrian law to the exclusion of the UN Convention on Contract for the International Sale of Goods.

## 13. Jurisdiction Clause

Place of performance is Kitzbühel. Place of jurisdiction for any and all disputes resulting indirectly or directly from contracts concluded between Kahlbacher and the supplier is the Austrian court that has jurisdiction *ratione loci* and *ratione materiae* for commercial law disputes for the place of business of Kahlbacher.

Any legal action taken against a consumer who has his/her place of residence, habitual residence or place of employment in Austria based on disputes resulting from this contract shall be subject to the jurisdiction of one of the courts in whose judicial district the consumer has his/her place of residence, habitual residence or place of employment. For consumers who do not have a place of residence in Austria at the time of contract formation, the statutory places of jurisdiction apply.

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Place, Date

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Signature supplier

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