

## General purchasing conditions

### § 1. General provisions

- 1.1 Only the following provisions apply for all deliveries, services and offers by the suppliers of KRD Coatings GmbH (hereinafter KRD), unless otherwise expressly agreed. The seller's delivery conditions in its own general terms and conditions or in relation to its order confirmation are hereby expressly vetoed. The unconditional acceptance of order confirmations or deliveries implies acknowledgement of such conditions.
- 1.2 The following delivery conditions also apply for all future deliveries, services or offers to KRD, regardless of whether an agreement has been made on this or not.
- 1.3 Orders and contracts are only binding if they are made in writing, or have been confirmed in writing. KRD offers can only be accepted within 14 days, unless otherwise agreed.
- 1.4 KRD is entitled to change the time and place of delivery, as well as the packaging, at any time by sending a written notification no later than 7 calendar days before the agreed delivery date. The same applies for the content of orders, insofar as these can be implemented as part of the seller's normal production process without significant extra time or expense. In these cases, the notification period is at least 5 calendar days. The proven, appropriate additional costs arising from the change are compensated by KRD. If such changes result in delivery delays, the originally agreed delivery date is postponed accordingly, insofar as the delay is unavoidable. The seller must advise the expected additional costs, as well as the expected delivery delay in writing promptly before the delivery date, but at least within 5 working days of receiving the change notification. A notification received after this time is not taken into account, and does not result in compensation or postponement of the delivery date.

### § 2. Delivery and shipment

- 2.1 The delivery time stated on the order (delivery date or period) is binding, unless KRD has exercised its right to change the delivery date. In this case, only the modified delivery date is binding. Early deliveries are not permitted. The seller is obliged to immediately inform KRD in writing if circumstances which prevent the delivery time from being upheld arise or become apparent.
- 2.2 The seller must uphold KRD's shipment regulations, as per Appendix 1 of these purchasing conditions, and those of the forwarding agent/freight carrier. The KRD order and item number must be stated on all shipment papers, letters and invoices.
- 2.3 If the delivery day on the order is determined by the calendar, the seller falls into default once this day has passed, without KRD needing to send any reminder.
- 2.4 In the event of a delivery delay, KRD is unconditionally entitled to the legal claims, including the right of withdrawal and the claim for compensation instead of the service, insofar as KRD has granted the seller an appropriate period of subsequent performance.
- 2.5 The seller is not entitled to make partial deliveries without KRD's consent. Insofar as the seller makes a partial delivery without KRD's consent, the entire service is considered as not having been rendered when the delivery time comes around.
- 2.6 The delivery periods or deadlines stated on the orders are binding, and are understood as being in terms of arrival at the place of fulfilment.
- 2.7 KRD is entitled to refuse acceptance of items not delivered on the delivery date stated on the order, and to return these or store them with third parties at the contractor's expense and risk.
- 2.8 Regardless of the type of transportation, the risk of accidental loss is only transferred to KRD once the items have been handed over at the agreed destination.
- 2.9 In the event of delivery delays, KRD is entitled to demand a contractual penalty of 0.5%, max. 5% of the respective order value, from the seller for every commenced week of delivery delay, insofar as the contractual penalty request has been threatened beforehand in writing. Insofar as the seller is obliged to pay a contractual penalty, this must be credited against any other delay damages to be paid by the seller.

### § 3. Quality and acceptance

- 3.1 The contractor ensures that the item complies with the submitted specifications, relevant standards and the latest standard of technology.
- 3.2 KRD will subject the item delivered by the seller to a conventional incoming goods inspection immediately upon receipt. Obvious defects must be reported to the seller immediately, but no later than 14 days after delivery. Prompt postage is sufficient for upholding the deadline. Hidden defects must be reported immediately after they have been identified, but no later than 14 days thereafter. Insofar as a warranty has been agreed on, the seller waives objection of delayed defect complaints during the warranty period.
- 3.3 The values calculated during the incoming goods inspections are binding for the dimensions, weights and unit numbers of a delivery.
- 3.4 Delivered machines and systems must particularly comply with the negotiated specifications or the rules stated in the specifications.

### § 4. Prices and payment conditions

- 4.1 The price stated on the order is binding, unless the seller reduces the prices in the pricelists used by you between the time of ordering and paying the invoice. In this case, discounts are credited to KRD.
- 4.2 Invoices must be drafted up immediately after shipment of the item, stating the order number. The sales tax must be shown separately.
- 4.3 Invoices must be drafted up immediately after shipment of the item, stating the order number. The sales tax must be shown separately. All order confirmations, delivery documents and invoices must state the order number, as well as the item number, delivery quantity and delivery address. If a processing delay should result due to some of this information being missing, the respective payment terms are extended accordingly.
- 4.4 The seller's payment claim only arises once a correct invoice has been sent, subject to proper delivery, and the accuracy of the content and calculations. Detection of a warranted defect entitles KRD to withdraw payment until fulfilment of the warranty duty.
- 4.5 Insofar as KRD falls behind with payment, it owes default interest of 5 percentage points above the basic rate – subject to other agreements.

### § 5. Warranty

- 5.1 The seller's warranty duty is governed by the legal regulations, unless otherwise stated below. Upon first request, the seller exempts KRD from all third-party claims asserted for defects, the breaching of third-party proprietary rights or product damages in its delivery. This does not apply if the seller is not to blame.
- 5.2 The warranty period is 36 months from delivery at the place of fulfilment. If the legal warranty period is longer, this longer period applies. The time-barring of warranty claims is suspended once the seller receives a written defect report. For replacement deliveries and defect rectification, the warranty period starts again for replaced and repaired parts. This does not apply if the replacement delivery or defect repairs were only performed by the seller as a gesture of goodwill.
- 5.3 In the event of defective delivery, the seller can choose to repair the defects free of charge for KRD, delivery a new item free of charge, or grant an appropriate discount. In urgent cases, KRD is entitled to repair the defects itself at the seller's expense, have these repaired by a third party, or procure a replacement elsewhere. This also applies if the contractor falls into default with fulfilling its warranty obligation. Urgent cases particularly exist if KRD is threatened as a result of significant damages through the seller's defective/delayed service, or if KRD threatens to fall into default with its service to third parties. KRD advises the seller prior to taking its own actions. If the statistical test process described in the order shows the maximum permitted error count as having been exceeded, KRD is entitled to raise defect claims for the entire delivery, or inspect the entire delivery at the seller's expense – after prior consultation. The right to assert further damage claims is not affected by this.
- 5.4 The seller is liable for replacement deliveries and repair work to the same extent as for the original delivery scope. The seller is particularly liable for transportation, travelling and labour costs. The warranty period for the replacement delivery begins no earlier than the day on which the replacement delivery arrives at the place of fulfilment.

## § 6. Product liability

- 6.1 The seller commits to exempting KRD from all claims raised against KRD for physical injury or property damage as a result of a defective product supplied by the seller. If KRD is obliged to perform a recall because of a defective product delivered by the seller, the seller bears all costs associated with the recall. KRD will request a statement from the seller prior to performing the recall. Insofar as KRD is partly at fault for the defectiveness of the end product, the compensation claim must be reduced proportionately. A contributory negligence fee particularly exists if the delivery was obviously defective, or if the product launch by KRD is considered to be grossly negligent.
- 6.2 The seller is obliged to maintain product liability insurance with an appropriate insured sum at its own expense. The covering of the recall risk or of penal or similar damages requires a special agreement. The seller will send KRD a copy of the liability policy at any time on request.

## § 7. Retention of title, protection of ownership

- 7.1 KRD reserves the ownership right and copyrights to orders and contracts submitted by KRD, as well as to drawings, illustrations, calculations, descriptions and other documents provided as part of the order. The seller may not provide third parties with access to the documents stated in clause 1 without the express consent of KRD, nor can it publicise them, use them or reproduce them. Usage for purposes other than those stated in the contract/order is not permitted. The seller must return all documents and any copies at KRD's request, if they are no longer needed by it as part of ordinary business operations, or if negotiations do not lead to the conclusion of a contract. During contractual execution, the seller must store the documents in clause 1 with the due care and diligence of a prudent businessperson.
- 7.2 Tools, equipment and models which KRD provides to the seller, or which are made for contractual purposes and charged to KRD by the seller, remain KRD's property, or are transferred to KRD's ownership. The seller must ensure that the items in clause 1 are identified as being KRD's property, that these are stored carefully, and are insured against any kind of damages. The items stated in clause 1 may only be used for the purposes of contractual execution. Subject to another agreement, the contractual parties each bear 50% of the costs for maintaining and repairing the items stated in clause 1. This does not apply for costs resulting from misuse by the seller or its staff. Insofar as this does not conflict with contractual execution, the seller must release the items in clause 1 in appropriate condition at KRD's first request.
- 7.3 The seller's retention of title only applies insofar as it is based on the payment obligation for the respective products, to which the supplier reserves its ownership, arising from the respective contractual relationship. Expanded or extended retentions of title are not permitted.
- 7.4 The contractor is liable for replacement deliveries and repair work to the same extent as it is for the original delivery item, i.e. also for transportation, travelling and labour costs, with no restriction. The warranty period for replacement deliveries starts no earlier than the day the replacement delivery arrives.
- 7.5 The contractor is obliged to refund appropriate costs for a recall based on the product liability law. The contractor is informed of this beforehand by KRD as quickly as possible.

## § 8. Third-party proprietary rights

- 8.1 The seller ensures that no third-party proprietary rights have been breached in relation to its delivery, and that third-party rights do not conflict with appropriate usage of the purchased items. The seller commits to exempting KRD from all claims raised by third parties against KRD for breach of industrial property rights, and to reimburse all necessary expenses relating to these claims. This particularly includes legal defence costs. This does not depend on the seller's guilt.

## § 9. Spare parts

- 9.1 The seller commits to providing spare parts for the products supplied to KRD for a period of at least 10 years from delivery.
- 9.2 If the seller intends to cease production of spare parts for the products supplied to KRD, it is obliged to immediately inform KRD of this. The seller commits to continuing production for at least another 9 months after deciding on the stoppage and informing KRD.

## § 10. XII. Equal opportunities for women (only from an order volume of € 50,000 net)

- 10.1 The contractor agrees
- 10.2 1. to comply with the applicable Equal Opportunities Act,  
10.3 2. depending on the number of employees, according to Section 3 of the Ordinance regarding Equal Opportunities for Women (FFV), to carry out one or several of the equal opportunities measures for women shown in Section 2 FFV to promote equal opportunities for women and/or support the reconcilability of work and family,  
10.4 3. to ensure that any subcontractors used to perform the contract agree to, according to Section 3 FFV, carry out measures according to Section 2 FFV and to comply with the obligations set out in Section 4 FFV. The contractor shall be liable if any subcontractors are in breach of any such obligations.
- 10.5 If the contractor or one of his subcontractors is guilty of violating the above-mentioned obligations, the contractor and customer agree a contractual penalty per breach of 1% and a cumulative penalty for several breaches of 5% of the contractual amount. The contractor is obligated to pay a contractual penalty even if the breach is carried out by a subcontractor commissioned by him or by a subcontractor commissioned by the original subcontractor.
- 10.6 If the contractor or his sub-contractors are guilty of non-performance regarding the obligations above, the customer shall be entitled to terminate the contract without a notice period.
- 10.7 The customer or a third party commissioned by him is, for control purposes, entitled to view the expense invoices of the performing company, the documents showing payment of taxes and contributions to domestic and foreign social insurance authorities, the documents showing contributions to domestic and foreign construction social security funds and the contracts agreed between the performing contractors. The performing companies shall inform their employees of the option of carrying out such checks and obtain their written approval. The performing companies shall maintain complete and auditable documents to check the above-mentioned and present them to the customer on request.

## § 11. XIII. ILO core working standards

- 11.1 The contractor agrees to perform the contract according to the performance specifications and exclusively using goods, which can be shown to have been obtained or produced according to the best possible interpretation of the minimum standards set out in the ILO core working standards. The minimum standards of the ILO core working standards result from
- 11.2 1. convention no. 29 on compulsory and forced labour dated 28 June 1930 (Federal Law Gazette - BGBl. 1956 II p. 641),  
11.3 2. convention no. 87 on the freedom of association and the protection of the right of association dated 9 July 1948 (BGBl. 1956 II p. 2073),  
11.4 3. convention no. 98 on the application of the principles of the right of association and the right to collective negotiations dated 1 July 1949 (BGBl. 1955 II p. 1123),  
11.5 4. convention no. 100 on equal pay for male and female workers for the same work dated 29 June 1951 (BGBl. 1956 II p. 24),  
11.6 5. convention no. 105 on the abolition of enforced labour dated 25 June 1957 (BGBl. 1959 II p. 442),  
11.7 6. convention no. 111 on occupational and professional discrimination dated 25 June 1958 (BGBl. 1961 II p. 98),  
11.8 7. convention no. 138 on the minimum age for work dated 26 June 1973 (BGBl. 1976 II p. 202),  
11.9 8. convention no. 182 on the prohibition of and immediate measures to prevent the worst forms of child labour dated 17 June 1999 (BGBl. 2001 II p. 1291),  
11.10 If the contractor or one of his subcontractors is guilty of violating the above-mentioned obligations, the contractor and customer agree a contractual penalty per breach of 1% and a cumulative penalty for several breaches of 5% of the contractual amount. The contractor is



obligated to pay a contractual penalty even if the breach is carried out by a subcontractor commissioned by him or by a subcontractor commissioned by the latter subcontractor.

11.11 If the contractor or his sub-contractors are guilty of non-performance regarding the obligations above, the customer shall be entitled to terminate the contract without a notice period.

11.12 The performing companies shall inform their employees of the option of carrying out such checks and obtain their written approval. The performing companies shall maintain complete and auditable documents and present them to the public authorities on request.

## **§ 12. XIV. Observance of wage agreement, minimum pay and social insurance contributions**

12.1 The contractor agrees

12.2 1. to at a minimum grant the labour conditions including salary to his employees set out in the wage agreement as specified by the Employee Assignment Act (AEntG) dated 20/04/2009 (BGBl. I p. 799) or according to other legal provisions regarding minimum pay,

12.3 2. to at a minimum pay his employees (excluding trainees) an hourly rate of € 7.50 for the performance of work,

12.4 3. to obligate the subcontractors commissioned by him or a lender commissioned by a subcontractor in writing to at a minimum comply with the work conditions for his employees, which the contractor himself agrees to meet,

12.5 4. to ensure that this obligation is transferred to the commissioned subcontractor or to a lender commissioned by the subcontractor in writing and to provide evidence of these written transfers to the public authorities on request,

12.6 5. to ensure that the commissioned subcontractors in turn transfer the above-mentioned obligations to the subcontractors or lenders commissioned by them in writing and obligate them to comply with these and to provide evidence of these written transfers to the public authorities on request.

12.7 If the contractor or one of his subcontractors is guilty of violating the above-mentioned obligations, the contractor and customer agree a contractual penalty per breach of 1% and a cumulative penalty for several breaches of 5% of the contractual amount. The contractor is obligated to pay a contractual penalty even if the breach is carried out by a subcontractor commissioned by him or by a subcontractor commissioned by the original subcontractor.

12.8 If the contractor or his sub-contractors are guilty of non-performance regarding the obligations above, the customer shall be entitled to terminate the contract without a notice period.

12.9 The customer or a third party commissioned by him is, for control purposes, entitled to view the expense invoices of the performing company, the documents showing payment of taxes and contributions to domestic and foreign social insurance authorities, the documents showing contributions to domestic and foreign construction social security funds and the contracts agreed between the performing contractors. The performing companies shall inform their employees of the option of carrying out such checks and obtain their written approval. The performing companies shall maintain complete and auditable documents to check the above-mentioned documents and present them to the customer on request.

## **§ 13. Data protection**

13.1 The seller declares it irrevocably agrees for shared personal data to be processed in relation to the order, in accordance with the legal provisions.

13.2 The seller is obliged to not disclose the order conditions or any of the information and documents provided for this purpose for a period of 10 years from contractual conclusion, and to only use these to process the order. This does not apply for publically accessible information. If requested, the seller shall immediately return the information provided to it as per clause 1 to KRD after queries have been attended to or after orders have been processed.

13.3 The seller is not entitled to allude to the business relationship with KRD in any advertising material, brochures etc., or exhibit delivery items manufactured for KRD, without the prior written consent of KRD.

13.4 The seller will impose the same obligations on its subcontractors.

## **§ 14. Other provisions**

14.1 The seller is not entitled to assign its claims resulting from the contractual relationship to third parties. This does not apply when monetary claims are involved.

14.2 The seller is not allowed to offset against KRD claims unless the affected claims are undisputed or have been legally established.

14.3 The place of fulfilment is the agreed place of delivery.

14.4 The exclusive place of jurisdiction for all disputes arising from the contractual relationship is KRD's headquarters.

14.5 German law applies exclusively. The United Nations convention of 11/4/1980 on the national sales of goods (UN purchasing convention) does not apply for the Federal Republic of Germany.

14.6 Should a clause of this contract be or become completely or partly invalid or infeasible, this shall not affect the validity of the remaining provisions of these purchasing conditions. Insofar as these purchasing conditions contain omissions, and no separate agreement between the parties exists, the legally valid regulations which the contractual parties would have agreed on based on the economic objectives if they had known about these omissions, are considered as being agreed on to fill these gaps.

As at: January 2012