



## 1. Scope

(1) The following terms and conditions of KERSTING GMBH · SAMPLING + GROUNDING (hereinafter referred to as „Buyer“), Gallbergweg 21, 59929 Brilon, Germany, represented by the managing director Stefan Penno, MBP BA IBA, which can also be called in the internet under [www.kersting-sg.de](http://www.kersting-sg.de) or will be made available upon request, shall apply to all contracts concluded between the Buyer and the seller concerning the delivery of goods. They shall also apply to all future business relationships, even if they are not expressly agreed again.

Other terms and conditions – insofar as they are not stipulated in the order – shall not become contents of the contract even if we do not expressly contradict these. Our General Terms of Purchase shall also apply if we accept the delivery without reservation in the knowledge of opposing conditions or conditions of the seller which deviate from our General Terms of Purchase.

(2) All agreements which are reached between the Buyer and seller in connection with the purchase contract, are recorded in writing in the purchase contracts, these terms and conditions and the orders of the Buyer.

## 2. Offer and conclusion of the contract

(1) Only written orders shall be deemed binding for us when we enter into a business relationship with a partner for the first time. Agreements by telephone or verbal agreements require our written confirmation with orders to be deemed valid.

Our subsequent orders (follow-up orders), no matter in what form they are granted, are always subject to the General Terms and Conditions of Purchase, even if we do not make special reference to these in an individual case.”

(2) Calculations, drawings, plans and other documents, which also belong to the offer, shall remain the property of the Buyer, who reserves all copyrights to these documents. The seller may not forward these documents to third parties without the written consent of the Buyer. If the seller does not accept the Buyer's offers these documents are to be returned to the Buyer immediately. The Buyer may also use brochures, plans and other documents describing the goods or the product towards third parties, e. g. for own advertising or other submission of offers free of charge. The Seller shall release the Buyer irrevocably and at first request from possible claims of third parties from a copyright or other property rights in this respect.

## 3. Payments

(1) The price stated by the Buyer in the order is binding and applies delivered, insofar as not otherwise agreed in writing between the parties. If the Buyer has undertaken to assume the transport costs then the Buyer is entitled to choose the transport company itself and at its own discretion. The packaging costs are included in the price. The price includes the respective applicable rate of value added tax. All invoices of the seller must feature the order number stated by the Buyer.

(2) The Buyer shall pay, insofar as not otherwise agreed in writing with the seller, within 14 workdays, beginning from receipt of the invoice as well as receipt of the goods including all agreed documents with 3% cash discount or within 30 days without deduction.

(3) The Buyer is entitled to the statutory rights to offset and retention in full. He is entitled to assign all claims from the purchase contract without the seller's consent. The seller is not entitled to assign receivables from the contractual relationship to third parties without the Buyer's prior written consent.

## 4. Delivery time

(1) The delivery period stated by the Buyer in the order or the stated delivery date are binding for the seller and must be observed. As soon as it is clear for the seller that the promised or agreed date cannot be observed, the Buyer is to be informed of this delay immediately in writing by stating the reasons.

(2) If the seller is in default with the delivery the Buyer shall be entitled to the statutory claims. If the Buyer asserts claims for damages, the seller is entitled to prove that he was not responsible for the breach of duty. The Buyer expressly points out to the seller that a delay in delivery for which the seller is responsible can lead to substantial claims for damages as the goods e.g. are determined for installation in a larger technical system or for creating extensive hardware and e.g. conventional penalties have been agreed between the Buyer and his ordering party with late completion or claims for damages can be asserted by the ordering party in case of late completion due to missed used, failure of or interruption to operation etc. Such claims can be very sensitive in terms of their amount and substantially exceed the respective order value.

## 5. Warranty / Liability

(1) The Buyer undertakes to inspect the object of contract for deviations in quality and defects within a reasonable period of time from delivery by the seller and report any defects to the seller. The complaint of obvious defects is deemed on time if it is received by the seller within 10 workdays from delivery of the goods; the complaint of hidden defects is deemed on time if it is received at the seller within 10 workdays from their discovery.

(2) The Buyer is entitled to the statutory warranty claims against the seller in full. Deviating regulations of the seller with regard to the statute of limitations and the right to damages shall not be recognised by us. The buyer is entitled to personally remedy the defects at the seller's costs in case of danger in default or in the event of absolute urgency.

(3) The statute of limitations for warranty claims is 2 years from delivery or in case the pre-requisites of § 438 Par. 1 No. 2b) BGB [Civil Code] exist 5 years plus 3 months.

## 6. Liability of the seller

(1) If a claim is asserted against the Buyer for damages by third parties owing to a product damage, for which the seller is responsible, the seller shall release the Buyer from all claims of third parties including the necessary costs for defending these claims at first request if the seller has deemed the reason in his field of control and organisation. If the product is used or has been installed in a building or a large technical system, the seller shall also assume all costs and damages within the framework of the afore-mentioned release, which are associated with the dismantling and new installation (also distant follow-up damages from defects).

(2) If the Buyer has to carry out a recall action and/or dismount the faulty or defective product owing to a damaging event within the meaning of the previous Subclause the seller undertakes to reimburse the Buyer all expenses which ensue from or in connection with the recall action/dismounting carried out by him, etc. The Buyer shall, insofar as he has the possibility and there is a reasonable period of time, inform the seller about the contents and the scope of the recall action/dismounting and request him to make a statement. Further statutory claims of the buyer remain unaffected thereby.

(3) The culpable exceeding of binding agreed delivery dates obliges the seller to pay a conventional penalty besides the provision of service. The amount of the conventional penalty is agreed at 0.2% per day, a maximum 5% of the net total order value. Further claims for damages of the Buyer



remain unaffected thereby; in particular the forwarding of conventional penalties and claims for damages of the ordering party against the Buyer.  
(4) If a claim is asserted against the Buyer by a third party because the seller's delivery infringes a statutory property right of the third party, the seller undertakes to release the buyer from the claims at first request including all necessary expenses, suffered by the Buyer in connection with the claim asserted by the third party and its defence. The statute of limitations for these claims for release is 3 years, beginning from the time at which the Buyer gains knowledge of the claim asserted by the third party.

#### **7. Reservation of title**

(1) All parts provided by the Buyer (reserved goods) and tools shall remain the property of the buyer. If the seller carries out processing or conversions this shall be carried out for the Buyer. If the reserved goods of the Buyer are processed with objects which are not his property he shall acquire the co-ownership to the newly produced object as a ratio of the value of the reserved goods delivered by him to the other processed objects at the time of processing. The same applies if an object provided by the Buyer is inseparably combined with other objects which do not belong to him. If the seller's object is deemed as main object after combining the goods the seller undertakes to assign the Buyer pro rata co-ownership. In any case the seller shall store the sold property and/or co-ownership of the Buyer in safekeeping on his behalf.

(2) If the seller requires samples, templates, drawings, documentation, tools, etc. to execute our order these shall be requested in writing from the Buyer. Documents, etc. handed over to the seller for executing the order shall remain the property of the Buyer. These must be stored carefully and free of charge. These may only be made accessible to third parties for the purpose as agreed per contract. The Buyer reserves all rights to his documents as well as documents produced according to his information and to processes developed by him. Tools – also in case only paid pro rata by the Buyer – may only be converted with written consent. The seller must return these to the Buyer immediately at own costs after satisfaction of the respective contract.

#### **8. Rights of use**

With the development of software and for works within the meaning of § 2 UrhG [Copyright Law] by order of and for the expense of the Buyer the seller grants the Buyer the exclusive right of use according to § 31 UrhG. The Buyer is in particular permitted to further assign all rights of exploitation, use and change in the afore-mentioned sense to third parties. The Buyer may use and change the documents and other services of the seller for the contractual project without the assistance of the Buyer by safeguarding possible personal rights under copyright law. Right of use in this sense at least comprises the exploitation rights §§ 15 - 22 UrhG.

#### **9. Documentation**

If certificates and documentation (e. g. in line with EN 10204) and comparable documents are owed the contract shall only be deemed as satisfied if these have been received in full by the Buyer. This shall also apply to protocols of all kinds, which are on the other hand to be signed by sub-suppliers or ordering parties of the Buyer.

#### **10. Quality assurance**

Within the framework of the certifications the seller permits the auditing of his operation by an employee of the Buyer or an expert determined in this respect.

#### **11. Terms of delivery**

The delivery must be made Ex Works at the costs and risk of the seller. Should the buyer have obliged to assume the shipment as well as packaging costs, these must be shown separately in the invoice. Shipment by parcel service is to be initiated automatically when the goods are ready for shipment; in case of larger weights a reasonably-priced freight forwarder is to be commissioned automatically when the goods are ready for shipment by coordination with the Buyer or the routing order is to be taken into account. Separate transport insurance shall be concluded by the Buyer if required. Partial deliveries require the prior written consent of the Buyer.

#### **12. Place of jurisdiction / place of performance / final provisions**

(1) Place of performance and exclusive place of jurisdiction for deliveries and payments and all disputes ensuing between the parties from the contracts concluded between the parties is the registered seat of the Buyer.

(2) The relations between the contractual parties are exclusively regulated according to the applicable law in the Federal Republic of Germany. The provisions of the UN law on purchases shall not apply.

(3) The seller is not entitled to assign his claims to third parties without the Buyer's consent.

(4) The German text version shall apply as finally binding in case of ambiguities due to language with regard to translations of the General Terms of Purchase or with other cases of doubt and interpretation problems.

(5) Should one regulation of these General Terms of Purchase be or become invalid or unenforceable this shall have no effect on the validity of the General Terms of Purchase on the whole. In such a case the parties are required to replace the non-performing provisions by an agreement which shall as far as possible correspond with the lapsed provision.