

**Terms and Conditions of Purchase of KUSTAN GmbH & Co. KG**

Last amended: 01.05.2009

**I. General/Exclusive Application**

Our contracts are concluded exclusively on the basis of the present terms and conditions of purchase. This also applies for future business transactions, even if we do not explicitly agree the present terms and conditions of purchase again. Deviating terms and conditions of the seller are hereby rejected; these will likewise not be recognised through acceptance of the goods without renewed, explicit rejection.

**II. Orders**

1. Exclusively the content of our written orders shall apply. Orders placed verbally or verbal subsidiary agreements will only be valid if confirmed by us in writing.
2. We shall not accept deliveries not based on written orders.
3. Our orders must be confirmed in writing within eight days. Following expiry of this period we shall no longer be bound by our order.
4. Through his order confirmation, the supplier guarantees that the goods ordered are of the quality required by us.

**III. Prices**

1. All prices stated are to be understood as net prices. If no prices are indicated in the order and are not stated by the seller until retrospectively, we reserve the right to approve these. Increases to agreed prices shall only be binding for us if we have confirmed them in writing.
2. Nothing else shall apply unless agreed in writing.

**IV. Delivery dates**

The delivery dates stated in our order are binding. If the supplier has not adhered to the agreed delivery date and we have unsuccessfully granted him an appropriate period for delivery, we shall be entitled, at our discretion, to withdraw from the contract in part or in full and/or to demand damages instead of the performance. If we assert claims for damages, the seller shall be entitled to demonstrate that he is not responsible for the violation of obligations. If there is a threat of a delivery delay, the supplier must inform us of this and the reasons immediately. In such cases, we shall be entitled to withdraw our order in part or in full.

**V. Delivery**

1. Delivery and dispatch shall be at the risk of the supplier, free house to our business address or the delivery location indicated by us. The costs of packing, freight and insurance shall be for the account of the supplier. If delivery ex-works is agreed in individual cases, the supplier must obtain the most favourably priced transport for us and ensure the correct declaration (concerning the value of the goods). Here too, the supplier shall be liable for transport damage.
2. We must be sent notification of dispatch on the date of dispatch. This must indicate our order number. All consignments received without correct notification will be stored at the expense and risk of the supplier until such time as correct notification of dispatch is received. Invoices and delivery notes enclosed with the consignment shall not apply as notification of dispatch.

**VI. Defect claims (warranty)**

1. The supplier guarantees that the goods delivered comply with the statutory provisions applicable for their use, correspond to state of the art technology and do not violate any rights of third parties.
2. In so far as defects to the goods delivered can be detected during the examination within the ordinary course of business, we shall report them to the supplier within 14 days of receipt of the goods. Defects that were not recognisable during this type of examination will be reported within a period of 14 days following detection. On-time sending of the notification of defects to the supplier shall suffice for adherence to the deadline.
3. The supplier shall be liable to us for all damage resulting from violation of a contractual obligation.
4. Defect claims shall become statute barred three years following the passing of risk, unless a written agreement has been made to the contrary.

**VII. Product liability**

The supplier shall indemnify us against all claims of third parties for damages based on product damage whose origin lies in his sphere of influence and organisation. The supplier shall also reimburse us for the costs of recall actions initiated by us for this reason.

**VIII. Invoices and payments**

Invoices must be sent by post to our business address, separately and in duplicate. All invoices must indicate our order number. In the absence of any written agreement to the contrary, payment shall be made within 14 days of receipt of the invoice and goods with 3% cash discount or within thirty days net. Payment shall not constitute either recognition of correct fulfilment or waiving of liability of the supplier for defects.

**IX. Assignment / withholding**

1. We are entitled to the full statutory rights of offsetting and withholding. We are entitled to assign all claims from the contract of purchase without the consent of the seller.

2. The assignment of claims against us shall only be effective with our written consent.

**X. Confidentiality, documents and items provided**

1. All drawings, plans and other documents or items that we hand over to the supplier for the submission of a quotation or for execution of an order shall remain our property and must not be used, reproduced or made accessible to third parties for other purposes. We reserve all copyrights to these documents. Following completion of the order, these documents or items must be returned to us free of charge. The same shall apply if the seller does not confirm the order in writing within eight days as per paragraph II no. 3.
2. The supplier must only use tools provided by us for the processing of the goods ordered by us. He undertakes to insure the tools at replacement value at his own expense, and hereby assigns to us all compensation claims against the insurer.
3. The supplier undertakes to use the knowledge and experience, acquired by him through execution of our order, exclusively for the performance of orders from our company and not to pass this knowledge or experience on to third parties.

**XI. Choice of law and place of jurisdiction**

1. Exclusively the law of the Federal Republic of Germany shall apply. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
2. Place of jurisdiction for both contract parties for all disputes is our company headquarters.

**XII. Severability**

Should a provision of the present contract be or become invalid or unfeasible, the validity of the contract as a whole shall remain unaffected. In such cases, the contract partners undertake to substitute the invalid or unfeasible provision with a valid or feasible provision that corresponds as closely as possible to the economic and non-pecuniary provisions.