

## 16 General Terms and Conditions of Purchase (GTCP) for KAISER GmbH & Co. KG

### 1. The KAISER GROUP

16.2 1.1 The **KAISER GROUP** consists of the following companies:

#### **KAISER GmbH & Co. KG**

Ramsloh 4, D-58579  
Schalksmühle  
Germany

#### **AGRO AG | A KAISER COMPANY**

Korbackerweg 7,  
CH-5502  
Hunzenschwil  
Switzerland

#### **N.V. PLASTIC COLOR | A KAISER COMPANY**

Puursesteenweg 363,  
B-2880 Bornem  
Belgium

### 2. General

2.1 Unless otherwise agreed, only the present terms and conditions of purchase ("GTCP") are applicable to contracts signed between KAISER GmbH & Co.KG (KAISER) and sellers ("suppliers"). The GTCP apply in particular to contracts relating to the sale and/or delivery of movable goods ("goods") irrespective of whether the supplier manufactures the goods himself or purchases them from suppliers (§§ 433, 651 BGB). Any deviating, conflicting or supplementary GTCP of the orderer shall only become part of the contract insofar as we have given our express consent to their application. This approval requirement shall apply in any event and for example if with the knowledge of the buyer's general terms and conditions of business we accept without reservation confirmations of orders or deliveries.

2.2 Insofar as nothing to the contrary is agreed, the general terms and conditions of purchase apply in the version valid at the time of the buyer's order or in any case in the version last provided to him in written form as a framework agreement. This also applies to similar future orders without the need for us to have to refer to them again in each individual case.

2.3 Any and all orders are binding if placed in writing or confirmed in writing. Legally relevant declarations and notifications made by the supplier relating to the contract (e.g. deadlines, reminders, rescission) must be in written or text form (e.g.

letter, email, fax). Legal formalities and additional evidence in particular regarding doubts about the legitimacy of the declaring person remain unaffected. In all cases, individual agreements reached with the supplier (including side agreements, additions and amendments) shall take precedence over these GTCP. Subject to proof to the contrary, a written contract or our written confirmation are decisive for the content of such agreements.

2.4 The present GTCP shall apply in all cases unless other conditions have been expressly accepted in writing by KAISER. Acceptance of a delivery shall in no case be construed as approval of the supplier's conditions.

2.5 References to the validity of statutory regulations shall only have clarifying significance. For this reason, the legal provisions shall apply even without such clarification unless directly amended or expressly excluded in these GTCP.

### 3. Tenders

3.1 Preparation and delivery of tenders to KAISER shall be free of charge.

3.2 Offers shall be prepared in accordance with the call for tenders. Any deviation from the tender specifications must be clearly indicated by the supplier.

As long as the order has not been placed, KAISER is entitled to withdraw from negotiations at any time and without any compensation being due.

## 4. Orders

4.1 An order shall only be valid if it has been officially placed in writing by KAISER. The quoted prices are fixed. Orally communicated orders, agreements, amendments shall only be valid when they have been confirmed in writing. Before accepting any orders, the supplier must point out obvious mistakes (e.g. spelling mistakes and calculation errors) and any incompleteness in the purchase order including the purchase order documentation for the purposes of correction and/or completion; otherwise the contract shall be deemed not to have been concluded.

4.2 Unless otherwise agreed, each order must be confirmed in writing within 5 working days and the confirmation must conform to the order in all respects. Consequently the contract shall not come into force until order confirmation has been received.

4.3 If the supplier does not issue a written confirmation within the above-mentioned period of time, the order shall be deemed to have been accepted. In every case, with unconditional execution the order is deemed to have been accepted by the supplier.

## 5. Time of delivery and delay

5.1 The type, scope and time of the delivery and/or service are specified in the order. Deviations are subject to written approval by KAISER. The supplier shall comply with the shipping instructions of KAISER and the forwarder or carrier. All shipping documentation, correspondence and invoices shall state KAISER's order and article numbers. Transport costs including packaging, insurance and all ancillary costs shall be borne by the supplier unless expressly agreed otherwise.

5.2 The delivery times or dates stated in orders are binding and apply on arrival at the place of

performance. The supplier shall immediately act to prevent any imminent or foreseeable delays and shall notify KAISER immediately of these.

KAISER is entitled to reject the acceptance of goods that are not delivered within the delivery time specified in the order and at the expense and risk of the supplier to return them or to store them with third parties.

5.3 In case of delayed delivery, for each started calendar day KAISER is entitled to demand an amount of 0.25% (per cent) of the agreed purchase price, limited to a maximum amount of 5% (per cent) of the total amount. We reserve the right to prove that a greater loss was incurred. The supplier retains the right to prove that no loss at all or a substantially lower loss was incurred.

5.4 The statutory provisions apply in the case of default of acceptance on our part. However, the supplier must expressly offer us performance even if a specific or definable calendar period for an action or participation on our part has been agreed (e.g. supply of material). In the event that we are in delay of acceptance, the supplier can demand compensation for his extra expenses in accordance with the legal provisions (§ 304 BGB). If the agreement relates to an unjustifiable good to be manufactured by the supplier (individual product), the supplier is only entitled to additional rights if we have undertaken to participate and are responsible for the failure to participate.

## 6. Delivery and Transfer of Title

6.1 The orders are subject to Incoterms 2010.

6.2 Transfer of title shall take place on transfer of risk. Assignment of the goods to us shall take place unconditionally and regardless of payment of the price. However, if in individual cases we accept an offer from the supplier which is conditional on payment of the purchase price, the supplier's retention of title lapses at the latest on payment of the purchase price for the delivered good. In the proper course of business, we are still entitled to resell the goods even before payment of the purchase price if the resulting claim is assigned in advance (alternatively applicability of the simple retention of title extended to the resale). In any case all other forms of the retention of title are excluded, in particular the extended retention of title, the transferred retention of title, and the retention of title extended in respect of further processing.

6.3 KAISER reserves the right to reject deliveries with defective packaging, marking or documentation as well as partial or advance deliveries that have not been agreed in writing.

6.4 KAISER reserves the right to return the packaging to the supplier in exchange for appropriate compensation.

## 7. Quality and Acceptance

7.1 The supplier warrants that the goods conform to the submitted specifications, applicable standards and to the state of the art.

7.2 Our duty to inspect goods is limited to defects which can be visually identified during the incoming goods inspection, including shipping documents (e.g. transport damage, incorrect or short deliveries) or spot checks during quality control procedures. Insofar as acceptance needs to take place, there is no obligation to accept

goods. For the rest, it depends on to what extent an inspection which takes into account the circumstances of the individual case is feasible according to the proper course of business. Our obligation to give notice of defects discovered at a later date remains unaffected. In the event of a complaint, the supplier can be invoiced for the costs of the examination and the replacement delivery. For all types of defects in each case the complaint period is 14 days after their discovery. During the warranty period the supplier waives the objection of delayed notification in respect of hidden defects.

7.3 The dimensions, weights and quantities of the delivered goods as determined at the time of the incoming goods inspection are binding.

## 8. Export Control and Customs

8.1 The obligation to provide long-term supplier declarations in respect of goods with preferential origin status in accordance with the currently valid version and also the information of whether the delivered goods are subject to export control is an essential component of the contracts which take place in accordance with these terms and conditions of purchase. This documentation must be sent before the initial delivery takes place or in each case by the end of the first calendar week of a new year.

8.2 If it transpires that the long-term supplier declarations are insufficiently informative or incorrect, KAISER must be provided on request with accurate and complete information sheets confirmed by the customs authorities regarding the origin of the goods.

8.3 In the event of amendments to the confirmed originating and preference characteristics of the supplied goods, the supplier undertakes to inform KAISER immediately of these.

8.4. In addition, the supplier undertakes to compensate KAISER for the loss incurred as a

result of incorrect information about originating and preference characteristics.

## 9. Terms of Payment

9.1 Invoices stating the order and article number shall be issued immediately after shipment of the goods. The sales tax shall be shown separately.

9.2 Payment shall take place in accordance with the agreed terms of payment subject to proper delivery, correct pricing and proper calculation. In the event of a defect under warranty, KAISER shall be entitled to retain payment due until fulfilment of the warranty obligation.

9.3 The supplier shall only have a right of offset or retention in the event of res judicata or undisputed counterclaims.

## 10. Defective delivery

10.1 Unless otherwise agreed below, the statutory regulations apply to our rights in case of defects of quality and title (including false and shortfall in delivery as well as improper assembly or faulty operating instructions) and in cases of other breaches of duty by the supplier.

10.2 According to the statutory provisions, the supplier is particularly liable for ensuring that the goods have the agreed quality at the time when the risk passes to us. The product descriptions which, in particular through designation or reference in our order, are the subject matter of the respective agreement, or which were incorporated in the same way as these GTCP are deemed to be an agreement as to the characteristics. In respect of this, it makes no difference whether the product description originates from us, the supplier or the manufacturer.

10.3 Notwithstanding § 442 Abs. 1 S. 2 BGB (German Civil Code) we shall be entitled to unrestricted warranty claims even if the defect shall

10.4 Removal of the defective goods and new installation are part of subsequent performance insofar as the goods were fitted into another good in accordance with their intended purpose. The expenses incurred by the supplier for the purpose of the test and rectification (including any removal and installation expenses) shall be borne by him even if it becomes apparent that in fact no defect existed. Our liability for damages is not affected in the event of an unjustified request to remedy a defect; however we are only liable insofar as we have realised or as a result of gross negligence have failed to realise that no defect existed.

(6) If the supplier fails to honour his obligation to effect supplementary performance, we can - at our option by remedying the defect (repair) or with the delivery of a fault-free item (replacement) – within a reasonable period of time set by us remedy the defect ourselves and claim from the supplier compensation for the necessary expenses or an appropriate advance payment. If supplementary performance carried out by the supplier fails or cannot be expected of us (e.g. on the grounds of particular urgency, a risk to operating safety or imminent occurrence of disproportionate damage), there shall be no need to set a deadline; we shall inform the supplier immediately of such circumstances, in advance if possible.

10.5 As for the rest, in the case of defects of quality or title we are entitled to reduction of the purchase price or withdrawal from the contract. Furthermore we are entitled to claim compensation for damages and expenditure in accordance with the legal provisions.

## 11. Supplier regress

11.1 In addition to the claims for defects, we are entitled unreservedly to the statutorily determined rights of recourse within a supplier chain (in accordance with §§ 445a, 445b, 478 BGB). In particular we are entitled to demand from the supplier exactly the kind of supplementary performance (repair or replacement) which we owe our customer on a case-by-case basis. Our legal right to choose (§ 439 Abs. 1 BGB) is not affected by this.

11.2 Before we recognise or fulfill a claim for defects enforced by our customer (including reimbursement of expenses in accordance with §§ 445a Abs. 1, 439 Abs. 2, Abs. 3 BGB), we will inform the customer and following a brief explanation of the circumstances request a written statement. If the statement is not made within an appropriate period of time and if an amicable solution is not brought about, the actual claim for defects conceded by us shall be regarded as owed to our customer; counter evidence in this case shall be incumbent upon the supplier.

11.3 Our claims based on supplier regress also apply even if the goods were processed before being sold to a user by us or one of our customers e.g. by installation in another product.

## 12 Manufacturer Liability

12.1 If the supplier is responsible for a product defect, he shall indemnify us against claims by third parties insofar as the cause is found in his sphere of control and organisation and he is himself liable in relation to third parties.

12.2 Under his obligation to indemnify, the supplier must reimburse any expenses in accordance with §§ 683, 670 BGB that arise out of or in connection with any recourse taken by third parties including for recall campaigns carried out by us. Insofar as this is possible and reasonable, we shall inform the

supplier and give him the opportunity to comment. Further legal claims shall remain unaffected.

12.3 The supplier shall take out and maintain product liability insurance granting reasonable lump sum coverage.

## 13 Limitation period

13.1 The reciprocal claims of the parties to the contract become time-barred in accordance with the legal regulations unless agreed otherwise.

13.2 Notwithstanding § 438 Abs. 1 Nr. 3 BGB, the general statute of limitations for claims resulting from defects of quality is 3 years from transfer of risk. Insofar as an acceptance has been agreed, the statute of limitations shall begin with the acceptance. The limitation period of 3 years shall also apply accordingly to claims arising out of defects in title whereby the statutory limitation period for claims in rem for the restitution of property (§ 438 Abs. 1 Nr. 1 BGB) remains unaffected; notwithstanding the aforesaid, claims arising out of defects in title shall on no account be time-barred as long as the third party can assert the right – particularly because it is not yet time-barred – against us.

13.3 The limitation periods of the right to purchase including the above-mentioned extension shall also apply – within the legal scope – to all contractual claims for defects. If a defect also entitles us to assert non-contractual compensation claims, the standard statutory period of limitation (§§ 195, 199 BGB) shall apply unless other statutory periods of limitation result in a longer period in the case in hand.

## 14 Copyright and confidentiality

14.1 All rights and documents such as drawings, technical documentation etc. which KAISER provides to the supplier for the purpose of fulfilling the order shall remain the property of KAISER and must automatically be returned in full upon termination of the business relationship.

14.2 The supplier shall use the documentation and all associated information solely for the purpose of order fulfilment. Without prior written consent on the part of KAISER, the supplier is not entitled to manufacture products for third parties on the basis of the documentation and information or to copy or otherwise disclose such documentation or information in whole or in part to third parties for purposes other than order fulfilment

## 15 Third party property rights

15.1 The supplier shall hold harmless and fully indemnify KAISER against all third-party claims in connection with the delivery or service arising out of product liability and intellectual rights.

## 16 Applicable Law and Place of Jurisdiction

16.1 Unless otherwise agreed, the legal relationships established by the purchase contract shall be governed solely by German law, with the exclusion of the Vienna Convention on Contracts for the International Sale of Goods dated April 11, 1980.

16.2 The place of jurisdiction is Iserlohn (Germany).

However, KAISER is allowed to sue the supplier at his place of business or at the place of jurisdiction of the delivery obligation in accordance with these GTCP or an overriding separate agreement. This agreement on jurisdiction is governed by German law.

16.3 The English-language version of this contract is provided for information purposes only. Only the German-language version is valid in a court of law.

## 17 Severability clause:

Should any individual provisions of these GTCP be or become invalid, this shall not affect the remaining provisions. These provisions shall be recognised by both parties or can be modified by means of a mutual notice of objection.

Schalksmühle, 19.02.2018