

# KENERSYS INDIA

## General Terms and Conditions with regard to Purchase (Conditions of Purchase)

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### **I. Area of application**

(1) The following General Terms and Conditions with regard to Purchase (“Conditions”) shall apply to all present and future purchases which we make at our suppliers' exclusively, and they shall also apply if no direct reference is made to these conditions. We explicitly object to terms of the supplier which oppose these Conditions or diverge from them unless we have agreed in writing to their validity. Our Conditions shall apply also if we upon knowledge of opposing Conditions or of Conditions of the supplier which diverge from our Conditions unconditionally accept or pay the deliveries of the supplier.

(2) All agreements made between us and the suppliers are included in writing in this agreement. Changes and amendments which were made orally after the conclusion of the agreement shall be subject to our consent for their validity.

### **II. Conclusion of agreement, performance, documents, property rights**

(1) These Conditions applies to all goods and services as determined in the respective quote issued by the supplier and confirmed with the purchase order by us. Purchase orders shall only be binding if they have been delivered in writing. Purchase orders shall be considered accepted, if the supplier has not objected to them within ten days after receipt of the order. Provision of purchase orders and call offs that deviate or contradict from these Conditions shall have precedence. Apart from such deviation / contradictions, these Conditions shall remain unaffected.

(2) As far as the delivery items are concerned, all required properties, components and devices must be in agreement with state-of-the-art technology at the time of the delivery including the applicable national and / or international standards norms as DIN, ISO etc. Additionally, the supplier shall be obliged to observe the European and national safety regulations (e.g. CE certification). The contractual performance of the supplier shall include the delivery of documentation in line with one of these regulations, particularly instruction manuals, manufacturer's declarations or declarations of conformity. We reserve ourselves the right to inspect the delivery items already during the period of manufacturing or prior to shipping at the supplier's after consultation with the supplier. Such inspection shall, however, not be considered a legal acceptance and shall have no effect on the responsibility for defects on the side of the supplier in line with number VII of these Conditions.

(3) We commit ourselves to health and safety management according to OHSAS 18001 and to environmental protection according to ISO14001. Supplier shall join and support us in achieving exemplary environmental performance in all areas of operations and thereby meet all statutory requirements. In addition supplier commit that a vehicle carrying the goods ordered by us must have valid PUC certificate, RT/TC book and the driver should have valid driving license. We reserve the right to deny entry in its premises, if above conditions are not met. With regards to OHSAS 18001, supplier must ensure that the necessary PPE (Personal Protection Equipments) of standard make/ISI certified equipment must be used appropriately by supplier personal working in our premises. In case of transportation of hazardous/inflammable goods, supplier must ensure that its driver of the vehicle being used for transportation is trained for safety measures and for measures to be taken in case of emergency. Supplier will take all necessary precautions related to environment protection while packing, transportation, handling, transit, loading, unloading, etc. Supplier will extend and communicate these health, safety and environmental requirements to its employees and sub-suppliers. Supplier will intimate to us any precaution, facility that will be needed to take care of material at our end to ensure safe and friendly environmental conditions. For supply of any hazardous material the MSDS – Material Safety Data Sheet needs to provided before start of supply.

(4) All business-related or technical documents as well as all other information provided to the supplier by us shall be kept confidential with regard to third parties as long and to the degree that they have not evidently become public knowledge. This information remains exclusively our property and we reserve ourselves all rights to it. The information given to the supplier must not be published; copying and handing over to third parties shall only be permitted for the purpose of implementing the respective delivery of goods and only as far as this is absolutely necessary. In this context, the supplier shall protect our interest which is that the respective information shall not be propagated beyond the necessary level; in particular, the supplier shall make sure that any information disclosed to third parties is not published or propagated beyond the necessary level by this party. The supplier shall be obliged to return or destroy on request immediately and completely all documents provided by us, if applicable including copies and records as well as objects ceded on loan as long as this is not in contradiction to the contractual performance. Products which have been made on the basis of data designed by us such as drawings, models, recipes or the like shall be used by the supplier only for the execution of the order and not for his own purposes; in particular they shall not be offered or delivered to third parties.

(5) If the implementation of the order requires blue prints or working plans beyond the drawings and data delivered by us, the supplier shall take care of this aspect without special remuneration being paid to him. We undertake to provide the drawings prior to the beginning of the production; the drawings are to be coordinated with us. We shall be entitled to keep all data given to us by the supplier.

(6) The supplier shall transfer the implementation of the order or considerable parts thereof to third parties only after consent by us in writing; unless the operation Conditions of the supplier are not equipped for the implementation of the order. Further, Supplier is only entitled to deviate from the agreed location of productions with our prior consent.

(7) The supplier shall be liable for each damage which accrues to us or our clients due to the fact that property rights of third parties were violated by the utilization or the change of the delivery. The supplier shall release us at his own expense from any claims made to us or our clients in this context.

(8) The supplier shall grant to us or our assigned representative's access to supplier's premises during normal business hours for inspection of quality provided same is pre-announced in writing with 5 business days.

### **III. Price and payment**

(1) Unless the parties have explicitly agreed on different prices, the prices shown on our order shall be binding. If there is no diverging agreement, the price shall include delivery duty paid and free point of destination including transport, unloading and packing (DDP Incoterms 2010). If on rare occasions we ourselves accept the costs for shipping and packing, the supplier shall arrange for the most cost-efficient shipping, unless specified instructions have been issued; the point of destination is not affected hereby. Collection fees shall be borne by the supplier.

(2) The prices are fixed prices; they are net plus currently valid VAT which is shown separately on the invoice. They exclude any additional claims e.g. because of increase of salaries or increase of material prices, special conditions at the site of construction, technical improvements or the like.

(3) Unless the order contains different specifications, we shall pay within 30 days after delivery and receipt of invoice with 3% discount or within 45 days net. Delivery here means the proper handing over of the merchandise including all owed documents and drawings. In all other respects, the statutory provisions with regard to delayed payment shall apply. In as far as the supplier's conditions contain payment arrangements which are more favourable for us the supplier's conditions shall apply.

(4) Invoices shall be sent separately for each order to the address for account specified in the order; they shall contain item number and order number, purchase order date, quantity ordered and unit of quantity, specification of article and our article number; invoices shall meet the legal provisions; original invoices shall never be sent together with the shipment. The supplier shall be liable for all consequences resulting from non-compliance with these obligations unless he is able to prove that he is not responsible for it; particularly as far as the determination of cash discount periods and the time for payment is concerned, the invoice is considered received when an auditable invoice which meets the legal formalities has been received.

(5) Payments shall be made by bank transfer. Payment shall be considered made at the point of time when the bank was given the transfer order.

(6) There shall be no interest payable from the due date. The default interest rate shall be in line with the statutory provisions as far as the Supplier's terms do not contain any regulations which are more favourable for us.

### **IV. Delivery time**

(1) The delivery time as specified in the order is binding. The supplier undertakes to inform us immediately if circumstances occur or become recognizable to him which indicate that the agreed on delivery date cannot be met. At the same time, appropriate counter-measures are to be suggested to us which will help to avert the consequences of the delay.

(2) The supplier shall be obliged to inform us on the shipment in advance and to forward to us, at the latest on the day of shipment, a notification of the shipment containing order number, item number, purchase order date as well as gross and net weight. The shipment is to be proven by a dispatch note.

(3) In the case of delayed delivery we shall be entitled to the unlimited legal claims. In particular, we shall be entitled to claim indemnity instead of performance under the statutory regulations and to withdraw from the agreement.

(4) If the supplier exceeds culpably the agreed-on delivery date or if he culpably defaults to fulfil his delivery obligations otherwise, the supplier shall pay to us as liquidated damages and not as a contractual penalty, 0.5 % of the net price of the order for each calendar day he is in default. The total contractual penalty shall be limited to a maximum of 10 % of the net price of the order. Further reaching compensation claims due to default shall not be affected; the incurred contractual penalty, however, shall be set off against possible compensation claims. We shall be entitled to reserve claims for contractual penalties until payments have definitely been made.

(5) We are entitled to terminate from the respective purchase in part or in its entire with a notification term of one week, in the event that the delay caused by the supplier reaches the maximum liability as stated under section IV (4), and the delivery of goods is not completed at this point of time. A notification is not required if the supplier refuse to deliver or if the delivery is objectively impossible in the above time mentioned before.

(6) We are entitled for compensation of the damages caused by supplier's delay, in the case we terminate the contract under the provisions mentioned under section IV (5). The maximum amount to be claimed by us is 100 % of the respective contract price with reference of the part of the contract which is terminated by us.

(7) We are entitled to set off liquidated damages as set forth above in clause IV (4) against suppliers open payments.

## **V. Place of supply, delivery**

(1) In accordance with the specifications of the order, the place of fulfilment for both parties including the place of delivery is our company in Wismar or a location of one of our establishments. If a different point of destination is planned, it shall be the place of fulfilment as far as the supplier is concerned.

(2) Unless the parties have explicitly agreed otherwise, the supplier shall be obliged to deliver packaged, duty paid, free point of destination and unloaded (DDP Incoterm 2010). The risk of accidental loss or incidental deterioration shall be transferred to us or to persons commissioned by us only when the goods are being handed over. In any case, the supplier shall be obliged to take care of all required customs formalities at his own expense and risk, to obtain at his own expense and risk all required import – and export permits and permits for the transport of the delivery items through any country or other official permits and documents as well as to pay taxes and other dues which accrue due to export and import of the merchandise and to the passing through any country before the merchandise has been delivered.

(3) Partial deliveries shall not be permitted unless we have given our explicit consent. In this case a clearly visible note has to be made on the shipping papers to the extent that the delivery is a "partial delivery" or a "rest delivery"; the invoice also shall contain this information and, in the case of partial deliveries the residual amount still to be shipped shall be specified. Incomplete deliveries which impair the function of the component are brought to the supplier's attention by us immediately. The supplier shall be obliged to complete these within two working days.

(4) The supplier shall assume the procurement risk with regard to the delivery of all required supplies and performances.

(5) In the case of delivery prior to the agreed on delivery date, we reserve ourselves the right to send the delivery back at the expense and the risk of the supplier. If in the case of early delivery the merchandise is not sent back, we shall store it on our premises at the expense and the risk of the supplier.

(6) As far as number of items, weights and dimensions are concerned, the results ascertained by our incoming goods control shall prevail unless another objective evidence is available.

(7) In the case of excess delivery (more goods delivered than ordered) the statutory regulation shall apply as follows: It is for us to decide if we accept the delivery or if we accept the ordered amount and refuse acceptance for the part in excess. We can send back the entire delivery if the entire delivered item reveals a fault due to the excess delivery. In the case of an excess delivery the risk involved is transferred only and in so far as we accept the delivery. In as far as we accept the excess portion of the merchandise we shall have to pay for it in accordance with the contractual price. If we refuse the acceptance of the excess delivery we shall be entitled to send it back at the expense and the risk of the supplier or in agreement with the supplier to store it at his expense and risk on our premises.

(8) If the supplier has taken over installation or assembly and if there are no contradictory agreements, the supplier shall bear all costs accruing.

(9) Packing in line with the stipulations of paragraph 2 shall be part of the scope of delivery. The return of the packing is subject to a separate agreement. The supplier shall be obliged to use environment-friendly packing material, which

allows recycling or convenient disposal. The packing ensures protection against damage, soiling and humidity during transport. Processing or assembly at our plant or at a plant commissioned by us must be possible without any additional packing-related work. All notes which are relevant for contents, storing and transport must be placed clearly visible on the packing. If returnable containers cannot be exchanged at the occasion of the delivery, they shall be sent back to the supplier at his expense and risk.

## **VI. Supply, retention of title**

(1) If we provide the supplier with parts we reserve our proprietary rights with regard to these parts. Processing or re-engineering by the supplier shall be made for us. In the case of processing or mixing with other items that do not belong to us we purchase the property of the new item in the relationship of the value of our item (purchase price + VAT) to the other processed or mixed items at the time of the processing or mixing. For the case that the mixing is made in a way that the supplier's item is to be considered the main thing the parties agree that the supplier shall transfer to us a joint ownership. The supplier shall keep sole or joint ownership in safe custody for us.

(2) A retention of title of the supplier shall become part of the agreement only if the retention of title terminates when the price of the goods subject to retention has been paid and we are entitled to resell or process them in the usual business practice. A further reaching retention of title shall not be accepted.

(3) Supplier shall mark all goods that was provided by us and whenever transfer of such goods has occurred, e.g. due to advance payments, downpayments etc.

## **VII. Liability, Liability for defects, product Liability**

(1) Supplier is liable for all damages of the goods before transfer of risk has occurred. This applies regardless of who is responsible or of the cause of the damage, unless the damages was caused by us or a third party who has acted on our behalf. In the events that the supplier is not responsible for damage, he has to remedy the damages on our cost.

(2) We will perform an incoming goods inspection only in terms of obvious visible damages, and in apparent deviations in identity and quantity. Such defects will be reported immediately. We reserve the right to conduct additional inspections of incoming goods. In addition, we notify defects as soon as they are detected on the circumstances of the course of our proper business practice. To this extend Supplier waives the right to object the claim for being too late.

(3) We shall be entitled to the full claim for defects; in any case we shall be entitled to request from the supplier either correction of the defect or the delivery of a new item. The supplier shall implement immediately the supplementary performance either as correction of the defect or as delivery of a new item. The supplier shall bear all costs accruing from the correction of the defect, in particular costs related to transport, travelling, work and material. In the case of defects, the same shall be apply to costs of inspections if such costs exceed the usual amount. The indemnity right and in particular the right of indemnity instead of performance remains explicitly reserved. If the first try lacks to show success, the correction shall be considered as failed.

(4) We shall be entitled to correct the defect ourselves or have it corrected by third parties at the expense of the supplier in urgent cases particularly in order to avert acute dangers or to avoid larger damages. We shall be entitled to the same right, if the supplier is in default with the correction of defects. In the case of demonstrable operational risk of the respective component the defect shall be corrected immediately at the expense of the supplier. We shall inform the supplier prior to the implementation of these measures, unless the urgency of the case requires the immediate action to avert dangers; in this case we shall notify him immediately afterwards. The liability for defects of the supplier is not affected by this action.

(5) If we take back products manufactured and/or sold by us as a consequence of a defective item delivered by the supplier or if for this reason the purchase price owed to us was reduced or we were held responsible in any other way, we shall reserve recourse to the supplier, with our defective product warranty with respect to the supplier not being subject to any deadline which usually is required. In the event of recourse to the supplier we shall be entitled to claim from him compensation for the expenses which accrued to us with respect to our customers and which were a consequence of the defectiveness of the performance if the defect claimed by the client already existed at the time the risk was transferred to us.

(6) If a defect becomes obvious within six months after transfer of risk it is assumed that the defect already was existing at the transfer of risk, unless this assumption is incompatible with the type of the item or of the defect.

(7) Claims with respect to deficiency in title become statute-barred after 10 years. In as far as the delivery item is an item which in accordance with its usual utilization was used for a building and caused the defectiveness of the building the respective claims based on material defects become statute-barred in five years; otherwise claims based on material defects become statutebarred in three years. The limitation of the claims, determined in sentence 2 and paragraph 4 sentence 2, with respect to the supplier because of a defect on an item sold to our client shall become effective at the earliest two months after the date when we have settled the client's claims. In the cases of sentence 2, first half sentence, this suspension of the time limit ends at the latest in six years and in the cases of sentence 2, second half sentence at the latest in three years and six months after the date on which the supplier has delivered the item to us. For the cases of paragraph 4 sentence 2, sentence 4 applies accordingly. Longer statutory limitation periods shall not be affected by the regulation in sentence 1 to 5. Additionally, all regulations with regard to commencement of

limitation, as well as regulations on suspension of the time limit, suspension and re-commencement of limitation remain unaffected as long as these purchasing conditions do not contain any more favourable conditions.

(8) In the event that we are held responsible for reasons of product liability, the supplier shall be obliged to release us from such claims if and in so far as the damage has been caused by a defect of the contractual object delivered by the supplier and, in cases of strict liability, fault can be attributed to the supplier. If the cause of the damage is to be found in the field of responsibility of the supplier, he shall carry the burden of proof insofar. In these cases, the supplier shall accept all costs and expenses including costs of a possible legal procedures or product recall. In all other respects, the statutory regulations shall apply.

(9) Supplier shall ensure adequate insurance cover to be disclosed when requested.

#### **VIII. Offsetting - and retention rights, prohibition of assignment of claims, securities**

(1) We shall be entitled to offsetting rights and retention rights to the unlimited legal scope. The supplier shall not assign claims from the business connection to third parties. The supplier can offset only claims which are undisputed, legally established or have been recognized by us. The supplier shall be entitled to exercise a retention right only in as far as his counterclaim is based on the same contractual relationship.

(2) If advances are agreed on, the supplier shall be obliged to provide us with an advance payment bond / bank Guarantee in the amount of the advance plus interest as security with regard to the repayment. The bond/ bank Guarantee shall be unconditional, unlimited, irrevocable and directly-liable, not unconditional "on first demand" of a credit institute or credit insurer authorized in India with domestic place of general jurisdiction; the bond/ bank Guarantee must be subject to substantive laws in India. The bond / bank Guarantee shall contain the obligation to waive the plea to dispute and the right of depositing. Additionally, it shall contain the obligation to waive the plea of set-off, unless the counterclaim of the supplier is undisputed and legally established. The advance payment bond/ bank Guarantee shall be returned when the advance payment plus interest has been fully used up in due payments or when the supplier has paid back advance plus interest in full. We shall be entitled to reject for important reasons a bail suggested by the supplier.

#### **IX. Withdrawal**

(1) We shall be entitled to withdraw from the agreement if the supplier stops his payments or applies for insolvency proceedings or comparable legal proceedings or if such proceedings are initiated or rejected for reasons of no assets. Other rights remain unaffected hereby.

(2) Force majeure or conditions beyond our control shall authorize us, irrespectively of our other rights, to withdraw fully or in parts from the agreement, if as a consequence of the condition beyond our control our interest in the performance ceases to exist.

(3) If the client justifiably withdraws from the agreement and if such withdrawal is not based on a breach of duty for which we are responsible, we shall be entitled to withdraw from the agreement with the supplier if we have no possibility to sell elsewhere or any other possible use. If in a case like this the supplier, too, has no possibility to sell elsewhere or any other possible use, he shall be entitled to request from us compensation of the costs accrued to the period of time when we withdrew from the agreement.

#### **X. Severability**

Should one or several stipulations of these Conditions be invalid or void or become invalid or void, the validity of the remaining stipulations or agreements remains unaffected. The parties undertake to replace invalid or void stipulations by valid stipulations which economically come as close as possible to the invalid stipulation. The same shall apply if the agreement should have a gap which requires amendment.

#### **XI. Applicable law and court of Jurisdiction**

(1) All legal relation between us and the supplier shall be governed by the laws in India and disputes shall be referred under provisions of Arbitration and Conciliation Act 1996 to the sole arbitrator appointed by us. The Place of sitting for arbitration will be Pune and language shall be in English. The award of Arbitrator shall be final and binding upon Parties to the contract.

(2) Exclusive court of jurisdiction for all disputes resulting from this contractual relationship is the head office of the ordering company of the Kenersys Group. We shall, however, also be entitled to bring an action against the contractual partner at the head office of his company.