

## GENERAL CONDITIONS OF PURCHASE

Unless otherwise specified in writing, the following General Conditions of Purchase shall exclusively apply. Regulations in deviation or beyond these General Conditions of Purchase shall apply only to the extent as expressly declared in writing by us. This shall also apply if the Contractor's General Terms and Conditions provide otherwise and we subsequently do not expressly disagree. In an existing business relationship all following orders shall be deemed to be issued under our General Conditions of Purchase, even without special note.

### 1. Orders:

Orders of the Purchasing Department of Smurfit Kappa Nettingsdorf AG & Co KG issued in writing or electronically shall be binding. Other agreements require our written confirmation.

We request to immediately send us the order confirmation. Deviations from our order must be listed in the order confirmation and require our written acknowledgement for mutual validity.

The Contractor shall obtain the approval of Smurfit Kappa Nettingsdorf AG & Co KG for any possible involvement of sub-contractors. In any case, the Contractor shall remain fully responsible for meeting his obligations in conformance with the contract.

Please respond to orders and deliveries exclusively to the Purchasing Department of Smurfit Kappa Nettingsdorf AG & Co KG.

### 2. Cost estimates:

Contractor's cost estimates shall be binding, if available in writing.

### 3. Prices:

Prices are DDP (place of destination: Haid bei Ansfelden, Nettingsdorfer Straße 40) according to Incoterms 2010, packed, unloaded, and are unchangeable fixed prices. If no prices are specified in our order, these need to be mentioned in the order confirmation, provided that no general price agreement exists between us and the Contractor.

If prices are expressly stated as non-binding we accept price increases during a long-term business relationship only if these are verifiable and are justified in detail. Price increases for an ordered item are not be allowed after we have placed an order. In the event of price reductions we imply that these will also be considered for the current order.

Prices mentioned for services shall be maximum prices which shall be adjusted in our favour in the event of changes. If the price of the ordered delivery or service will be reduced between proposal and delivery this price reduction shall be applicable to us to the full scope.

### 4. Travel expenses:

The travel expenses of the Contractor's service staff (incl. costs of transport and transport insurance for personal luggage as well as the tools on hand and those being sent) are included in the prices (section 3) and shall not be separately remunerated.

### 5. Delivery and terms of delivery:

The agreed dates and terms shall be observed. Partial deliveries are not allowed unless expressly agreed. Delivery takes place at the Contractor's costs and risk.

In the event of imminent delay in delivery the Contractor is obligated to inform us in writing and state the reasons and the expected duration of the delay. In the event of delayed delivery we reserve the right to either cancel the contract or insist on the delivery in terms of the statutory rights we may be entitled to.

Deliveries shall be deemed to be performed only if the required technical documentation (e.g. CE marking, material declaration, disposal regulations, safety data sheets) have also been completely supplied.

In the event of disruption of our business and shutdown as well as force majeure we shall neither be required to accept the ordered goods nor be obligated to pay damages.

## **6. Packaging:**

Specific instructions excepted, the goods shall be packed as usual in trade, appropriately and properly. Packaging shall be charged at cost price if at our expense. For returnable packaging the agreements with the Contractor shall apply.

The Contractor shall be liable for transport damage resulting from faulty packaging.

## **7. Dispatch:**

If the required shipping documents are missing the deliveries will not be accepted as a fulfilled order and/or processed but will be stored at the Contractor's risk and cost. Our order number shall be stated on the shipping documents (delivery notes, freight and customs documents).

Delivery shall take place in accordance with our shipping instructions. The Contractor shall choose the method of transport which is most favourable and suited to the merchandise value. If third parties (forwarders) are involved the Contractor shall ensure compliance with our shipping instructions.

Ancillary costs in connection with the execution of the order which are not covered by the contract shall be at the Contractor's expense.

## **8. Acceptance and warranty:**

Unless otherwise agreed, the Contractor shall assume the full warranty for execution of delivery according to the order and compliance with all statutory regulations for the duration of two years as of commissioning and/or start of use and/or delivery.

The products to be delivered and/or the services to be rendered must comply with all relevant statutory regulation, standards and official requirements, if applicable.

By accepting the order the Contractor expressly agrees that no rights, in particular no third-party property rights, are incorporated in the subject of delivery. In the event that rights of third parties should be asserted the Contractor is obligated to hold us harmless and indemnify us for the costs of legal representation and consultation incurred by the defence of such claims.

In the event of delivery of defective goods we shall be entitled at our own option to cancel the order and procure the goods from third parties at the Contractor's expense, or to demand replacement delivery of goods as specified in the contract, or to keep the goods for a reduced value which shall be bindingly identified by an expert. We expressly reserve the right of offset and/or retention if services of the supplier are rendered incomplete or faulty.

The transfer of the goods and/or use of the service shall not mean that we accept the product or service as being free of defects. Claims for damages are reserved in any case. In the event of rectification of defects the warranty period shall start again. Defects can be claimed not only in court but also in writing towards the Contractor. Thus, the claims asserted within the warranty period in writing can be pursued by legal action also after lapse of the warranty period. An obligation to notify about defects according to §§ 377 f UGB (Austrian Commercial Code) shall not apply.

## **9. Invoicing:**

Invoices shall be sent after proper delivery/service in compliance with the formal requirements under sales tax law to the following address:

Smurfit Kappa Nettingsdorf AG & Co KG  
c/o Nettingsdorfer Service Center GmbH & Co KG  
Nettingsdorfer Straße 40  
A-4053 Haid bei Ansfelden

and/or via e-mail to:  
[nsc@smurfitkappa.at](mailto:nsc@smurfitkappa.at)

Our order number must be clearly stated in the invoices and credit notes. Invoices without order number will be returned to the Contractor. In this case the invoice shall be deemed not to be issued until a new invoice is received, which meets such requirements.

Invoices for materials must state the type of dispatch. Invoices for services shall include information concerning proof of performance of the services as mentioned in the invoice.

#### **10. Payment:**

Unless otherwise agreed, payments will be made within 45 days with a discount of 3% or within 90 days net after receipt of the invoice and verification of correctness. For settlement of invoices we reserve all legally permitted options for setoff against our counterclaims. The time of payment shall not affect the Contractor's warranty and our right of complaint.

#### **11. Order documents, drawings:**

All information, drawings, models and samples provided to the Contractor for the execution of the object of delivery shall remain our exclusive property. The Contractor shall not be allowed to use, duplicate or make them available to third parties. We shall receive an exclusive right of use, unlimited in time and region, in the drawings and documents prepared by the Contractor according to our specifications. This right of use also relates to any at all types of use established now or in the future, in particular also electronic types of use. These include in particular, but are not limited to: (a) The right of processing and modification, including title and designation; (b) the right of permanent or temporary duplication (incl. digitalisation) in any way; (c) the right of distribution and marketing in any way for commercial and non-commercial purposes; (d) the right to provide them in electronic form, wired or wireless, in particular also in the Internet; (e) the right of lease; (f) the right of radio broadcasting or similar type of broadcasting; and (g) the right of recitation and public performance. Unless otherwise agreed, the prepared drawings and documents shall be handed over to us directly after delivery, or in the event of failure of delivery, without special request immediately and completely including any copies, if applicable. The Contractor shall consider orders and related work as well as all documents provided in this regard as business secret and treat them confidential. For any breach of this obligation the Contractor shall be obligated to pay a contractual penalty to the amount of EUR 5,000 per breach. This contractual penalty shall be owed also if the occurrence of a damage cannot be proven, the defence of continuation shall be excluded. Payment of the contractual penalty shall not affect our claims for further damages. Unless expressly agreed otherwise, no remuneration shall be granted for the preparation of planning and similar work.

#### **12. Liability:**

The Contractor shall be liable without limitation for damage according to the statutory provisions (incl. the Product Liability Act). Limitations of any kind of the claims for compensation we may be entitled to by law or other regulations will not be acknowledged.

#### **13. Compliance with the law, documentation obligations:**

The Contractor is obligated to meet all provisions applicable in connection with rendering the agreed services in terms of undercutting the costs of other producers ("wage dumping") or social dumping. The Contractor shall be responsible to comply with all obligations to notify and documentation requirements at home and abroad, and to obtain any required approvals relating to rendering the agreed services.

The Contractor is obligated to properly maintain appropriate payroll documents and/or social security information as well as to pay any taxes and contributions. Employees or other persons entrusted with rendering the agreed services shall be provided all required documents and information for proof.

The Contractor shall ensure that persons assigned by him to render the agreed services will comply with the current safety and accident prevention regulations applicable on our premises and shall provide evidence on this matter. Furthermore, The Contractor commits to comply with our Code of Conduct regarding ethical business practices.

The Contractor shall provide to us appropriate proof of compliance with the obligations mentioned above without request in the required language.

The Contractor is obligated to hold us harmless and indemnify us for claims of any type resulting from the failure to comply with the obligations under this section.

In consideration of such statutory liabilities and any contributions to be paid, we shall be entitled to demand reasonable security in the form of a bank guarantee or to withhold in our sole discretion such reasonable part of the agreed remuneration until any payment obligations are finally settled or such obligations become time-barred, whichever occurs earlier.

**14. Place of performance, applicable law, place of jurisdiction:**

Unless otherwise agreed, place of performance for delivery of the goods and/or service is the factory receiving inspection of Smurfit Kappa Nettingsdorf AG & Co KG.

The relevant law of Austria shall apply to all legal relations between Client and Contractor. All disputes resulting from delivery contracts are subject to the exclusive jurisdiction of the responsible court in Linz, Austria. However, we shall also be entitled to appeal to the Contractor's general place of jurisdiction.

**15. Severability clause:**

If a provision of these General Conditions of Purchase should be or become invalid or ineffective this shall not affect the validity of the remaining provisions. The invalid or ineffective provision shall be replaced by such a provision which comes closest to the economic effect of the invalid or ineffective provision and the original intention of the contracting parties. The same shall apply to unintentional gaps.

**16. Our environmental policy:**

We produce environmentally friendly products with environmentally sound technologies and economic use of natural raw material (thinning material and saw mill residues, recovered paper).

We promote the environmental awareness of our employees by further education.

We meet our legal obligations and strive for good cooperation with the authorities.

We inform the public about environmental activities and seek for dialogue with affected parties and adjoining owners.

We require contractual partners working on our premises to meet our environmental standards.

We inform customers with regard to environmental aspects of our products and manufacturing processes.

In the event of deviations or contradictions between the German and the English version of these General Conditions of Purchase the German version shall prevail.

*Nettingsdorf, July 2019*