

General Terms and Conditions of Purchase of Kindlimann AG

I. Scope

These General Terms and Conditions of Purchase ("GTC") of Kindlimann AG apply exclusively to all agreements concluded between sellers or suppliers ("Supplier") and Kindlimann AG ("Buyer"). Any deviating terms and conditions of the supplier (e.g. offer, order confirmation or general terms and conditions of sale of the supplier) are hereby expressly rejected.

Deviations from these General Terms and Conditions of Purchase are only valid if they have been accepted in writing by the customer. Within the scope of these General Terms and Conditions of Purchase, all forms of transmission that allow proof by text, such as email, are equivalent to the written form.

II. Order

1. Delivery contracts (order and acceptance) and delivery requests as well as their amendments and additions must generally be in writing.
2. Orders and delivery requests must be confirmed by the supplier within five working days. They become binding at the latest if the supplier does not object within five working days of receipt.

II. Change of order

1. The supplier must expressly indicate any deviations from the customer's order in the order confirmation. Such deviations will only become part of the agreement if confirmed in writing by the customer.
2. The purchaser may request changes to the design and execution of the delivery item, even after receipt of the order confirmation, provided that this is reasonable for the supplier. If this results in additional or reduced costs or other changes (e.g. postponements of deadlines), the supplier must inform the purchaser of this in writing within five working days. The parties must then agree on a corresponding adjustment to the agreement.

III. Payment

1. Payment is due within 30 days of receipt of the complete and defect-free goods and invoice by the customer with a 2% discount or within 60 days without deduction.
2. In case of non-contractual delivery, the customer is entitled to withhold payment until proper fulfillment.
3. The supplier is not entitled to assign its claims against the customer or have them collected by third parties without the customer's prior written consent, which may not be unreasonably withheld. If the supplier assigns its claim against the customer to a third party without the customer's consent, contrary to sentence 1, the assignment is nevertheless effective. However, the customer can choose to make payments to the supplier or to the third party with a discharging effect.

IV. Notification of defects

1. The Purchaser may inspect the deliveries upon or after acceptance of the deliveries. Any obligation on the part of the Purchaser under applicable law to inspect the deliveries or services or to inform the Supplier of defects within a certain period of time is hereby excluded to the extent legally permissible.
2. If the obligation to inspect is not excluded in individual cases, the following provisions apply: (i) The purchaser must only inspect the deliveries for deviations in type and quantity and for obvious transport damage and (ii) the purchaser must inform the supplier of these deviations and damages within 14 days of receipt of the delivery at the receiving point. To fulfill the obligation to notify, the purchaser must only provide the supplier with a brief description of the deviation, damage or defect.

3. Furthermore, the purchaser may complain about defects at any time during the warranty period. In this respect, the supplier waives the objection of late notification of defects.

V. Confidentiality

1. The supplier undertakes to treat all non-obvious commercial and technical details which become known to him through the business relationship with the customer as confidential as a business secret.
2. The supplier may not provide drawings, models, templates, samples and similar items to unauthorized third parties or otherwise make them accessible. The reproduction of such items is only permitted within the scope of operational requirements and copyright provisions.
3. The supplier may only advertise its business relationship with the customer, include the customer in a reference list or generally refer to the business relationship with the customer with prior written consent.
4. The confidentiality obligations do not apply to the supplier's subcontractors to the extent necessary for the performance of the agreement. However, these confidentiality obligations must be imposed on the subcontractors.
5. These obligations will survive any termination or cancellation of the Agreement for any reason.

VI. Delivery dates and deadlines / shipping clauses

1. Agreed delivery dates and delivery periods are binding. They begin on the date of the order. The decisive factor for compliance with the delivery date or delivery period is the receipt of the contractual goods by the customer. If delivery DDP Incoterms has not been agreed, the supplier must make the goods available in good time, taking into account the usual time for loading and shipping.
2. Any impending delays in delivery and the expected duration of the delay must be communicated to the customer immediately in writing.
3. Deliveries must be processed according to the customer's instructions (particularly with regard to import and export deliveries).
4. The INCOTERMS in their currently valid version apply to all trade terms.

VII. Delay in delivery

1. The supplier is obliged to compensate the purchaser for all damages caused by the delay.
2. The compensation includes in particular additional freight costs, retrofitting costs, production line downtime and, after setting a grace period without result or if interest in the delivery ceases (without the need for setting a grace period), also the additional expenses for covering purchases.
3. If the agreed delivery date is exceeded by more than four weeks, the customer is entitled to withdraw from the agreement with immediate effect without granting a grace period. In addition, in the event of a delay in delivery (except in the case of force majeure), the customer can demand a contractual penalty of 0.5% of the total price for each calendar day commenced, but a maximum of 15%. Payment of this contractual penalty does not release the supplier from its contractual obligations. In particular, the customer can still demand real enforcement. The customer also reserves the right to claim compensation for further damages exceeding the amount of the contractual penalty.

VIII. Force majeure

1. Force majeure includes industrial disputes, unrest, official measures and other serious, unforeseeable and unavoidable events. These release the contracting parties from their performance obligations for the duration of the disruption and to the extent of their effect. This also applies if these events occur at a time when the affected contracting party is in default. The supplier is obliged to provide the other party with the necessary information immediately and to adapt its obligations to the changed circumstances in good faith.

2. Shortages of raw materials or delays by the Supplier's suppliers and subcontractors shall not be considered force majeure unless they themselves are affected by force majeure.

IX. Quality and documentation

The supplier is obliged to ensure that the goods correspond to the agreed quality, in particular that they correspond to the agreed specification and that all applicable laws in the country of production and in the country of planned use are met. The supplier must provide all necessary accompanying documents (in particular 3.1 acceptance test certificates). A lack of documents is also considered a material defect. The currently valid version of the purchaser's quality assurance agreement (QAA) is an integral part of the purchasing conditions for production materials and regulates the purchaser's requirements for quality and documentation.

X. Warranty

1. In the case of deliveries of faulty goods, the customer can choose to request free repair or replacement, make a deduction from the price corresponding to the reduced value, carry out repairs himself or have them carried out by a third party at the supplier's expense, or withdraw from the agreement in the event of significant defects. Alternatively or in combination with the previous warranty rights, the customer can demand reimbursement from the supplier of all costs (e.g. freight costs, retrofitting costs, production line downtime costs, testing costs, recall costs), expenses, losses or other damages. The supplier is obliged to do this regardless of fault.
2. If the same goods are repeatedly delivered faultily, the purchaser is entitled to withdraw from the contract for the unfulfilled scope of delivery after a written warning, even in the case of insignificant defects.
3. The warranty ends 36 months after acceptance by the purchaser. By submitting a written complaint about defects, the warranty period is suspended until the defects complained of have been completely remedied and payment deadlines are interrupted. In the event of repair or replacement, a new warranty period of 24 months begins from the time the defect is remedied.

XI. Liability

Unless a different liability provision is made elsewhere in these terms and conditions, the supplier is obliged to compensate the customer for any damage caused directly or indirectly as a result of a faulty delivery, due to a violation of official safety regulations or for any other legal reasons attributable to the supplier.

1. If the purchaser is liable to third parties for damages caused by the supplier, the supplier shall fully indemnify the purchaser against these damages. This also applies to any contractual penalty claims (e.g. contractual penalties) made by the third party.
2. If the purchaser is held liable for non-negotiable rights against third parties based on strict liability, the supplier shall indemnify the purchaser to the extent that he would be directly liable. The compensation for damages between the purchaser and the supplier is based on the respective share of fault.
3. The supplier is liable for the costs of the purchaser's measures to prevent damage (e.g. product recall).
4. The purchaser will inform and consult the supplier if he wishes to make a claim against him in accordance with the above provisions. He can, upon request, give the supplier the opportunity to investigate the damage.

XII. Intellectual property rights

1. The supplier is liable worldwide for claims arising from the infringement of third-party intellectual property rights and applications for intellectual property rights (intellectual property rights) when the delivery items are used in accordance with the contract.

2. He indemnifies the purchaser and his customers from all claims arising from the use of such intellectual property rights.
3. This shall not apply if the supplier has manufactured the delivery items according to drawings, models or other equivalent descriptions or information provided by the customer and does not know or, in connection with the products developed by the supplier, does not have to know that this infringes intellectual property rights.
4. The supplier undertakes to inform the purchaser immediately of any known risks of injury and alleged cases of injury and to give the purchaser the opportunity to counteract corresponding claims.
5. At the request of the Purchaser, the Supplier shall inform the Purchaser of the use of published and unpublished proprietary and licensed intellectual property rights and intellectual property rights applications relating to the delivery item.

XIII. General provisions

1. If the supplier ceases its deliveries or payments or if bankruptcy proceedings are initiated against its assets or if judicial or extrajudicial composition proceedings are initiated, the customer is entitled to withdraw from the contract for the part not yet fulfilled.
2. Should individual provisions of these General Terms and Conditions and the other agreements made be or become invalid or void in whole or in part, this shall not affect the validity of the remainder of the contract. The contracting parties are obliged to replace the invalid or void provisions with a provision that is as economically equivalent as possible.
3. All agreements concluded under these General Terms and Conditions of Purchase are subject exclusively to Swiss law. The provisions on conflict of laws, the UN Convention on Contracts for the International Sale of Goods (CISG) and any other intergovernmental agreements do not apply.
4. The place of performance is the customer's registered office. Other arrangements may be made for delivery.
5. The place of jurisdiction, even if the dispute concerns the validity of the agreement or these General Terms and Conditions, is the customer's registered office. However, the customer may also appeal to any other competent court.