

# **Purchasing Conditions of ElringKlinger Kunststofftechnik GmbH**

**(Status June 2002)**

**Etzelstraße 10, 74321 Bietigheim-Bissingen, Germany:**

## **I. General**

The following Purchasing Conditions are the content of all Agreements made between us and our suppliers. This will also apply if we do not refer to them expressly in later Agreements. The general terms and conditions of trade of the supplier will not apply to us, even if we have not expressly contradicted them. The acceptance of contractual goods will not imply any consent to the general terms and conditions of trade of the supplier.

## **II. Ordering and Order Confirmation**

1. Only orders issued in writing or in facsimile form are binding.

Order standards and drawings provided by us in individual cases, including tolerance instructions, are binding. With the acceptance of the order, the supplier will acknowledge that he has informed himself about the type of execution and extent of the service by looking at the existing plans. There will not exist any obligation to us in the case of obvious mistakes, written or calculations in the order, even in the documents, drawings and plans presented by us. The supplier is obliged to inform us about errors of this kind, so that our order can be corrected and replaced. This will also apply in the case of missing documents or drawings.

2. Orders will only be binding to us if the supplier confirms them in writing within 14 days of reception at the supplier, giving a binding delivery date, in so far as nothing different is agreed in the individual case.

3. Deviations in quantity and quality vis-à-vis the text and content of our order and subsequent contractual changes will not be regarded as agreed until we have confirmed this expressly in writing. The effects, particularly with regard to additional or reduced costs, are to be regulated conjointly.

4. Drawings, tools, samples, models, trade marks and displays or similar as well as finished and half-finished products that have been passed over by us or manufactured on our commission will remain our property and must only be supplied to third parties with our express written permission. Subject to Agreements in the individual case stating differently, these are to be given back immediately when the order is fulfilled, without a special request. Products manufactured or characterised with means of manufacturing, trade marks and displays of this type must only be supplied to third parties with our express written permission.

## **III. Delivery and Service**

1. The delivery dates and deadlines agreed are binding. They will run from the date of the order. The goods must be received at the reception point given by us within the delivery date or delivery deadline. The supplier gets into delay if the agreed delivery date has not been kept to. In the case that a delivery date has not been agreed, the supplier gets into delay if he has not kept to the usual delivery time reasonable according to the circumstances. The supplier is obliged to pay us compensation for the delay. Apart from this, we are entitled to withdraw from the agreement and / or to demand compensation, following the unsuccessful setting of a time limit. The supplier is to inform us immediately and to ask for our decision about the maintenance of the order, if delays are to be expected. The acceptance of a delayed supply / service without reservation will not contain any renunciation of the claims to which we shall be entitled because of delayed supply / service.

2. Partial deliveries are impermissible in principle, unless we have agreed to them expressly.

3. We are not obliged to accept the consignment before the expiry of the delivery deadline / delivery date.

4. If the delivery is impossible, we shall be entitled to demand compensation or to assert the other rights of guarantee.

## **IV. Despatch**

1. Our despatch requirements must be observed. The supplier must bear any costs arising to us because of a failure to observe our despatch regulations. This will also apply to additional costs for necessarily expedited transportation arising from circumstances for which the supplier is responsible. We shall only acknowledge additional transport insurance policies, if they have been agreed with us in writing in advance.
2. Consignments by train to our factory in Bietigheim-Bissingen (Postal code: 74321) are to be prepared for collection at the station in Bietigheim-Bissingen.
3. Transportation by road will only be accepted from 07.30 a.m. to 3.00 p.m. o'clock Mondays to Fridays in our factories. Tankers that are not equipped with the protection against overfilling prescribed by the authorities cannot be emptied in our businesses.
4. Delivery is to be made to the reception point given by us at the cost of the supplier clear of charges. If we are to bear the costs of freight exceptionally, the supplier must select the type of transportation stipulated by us, otherwise the type of transportation and delivery most favourable to us.
5. The risk will not pass to us until the reception by our reception point.
6. The packaging will be included in the price. If something different has been agreed exceptionally, the packaging is to be charged at cost price. The supplier must select the packaging predetermined by us and take care that the goods are protected from damage by the packaging. In the case of return, at least two thirds of the charged value is to be credited.

## **V. Quality, Testing and Passing and Complaints**

1. The supplier will be obliged to maintain the technical data, the relevant, applicable accident prevention and VDE regulations, the applicable legal regulations and the most recent recognized rules of technology required for its deliveries by us.
2. The supplier must carry out a check of the quality of its deliveries suitable according to their type and extent, to safeguard their quality.
3. The values ascertained at our goods in inspection and quality check will be decisive to dimensions, quantities and quality.
4. The supplier will renounce the excuse of delayed complaint and the acceptance without reservation ( § 378 HGB ).

## **VI. Price and Payment**

1. The prices agreed are understood to include packaging, freight and other expenses.
2. If prices have been agreed according to weight, the net weight ascertained at our premises will apply to the calculation.
3. We shall pay automatically, with a discount of 2% from the gross sum of the invoice, within 14 days of the date stamp of the receipt of the invoice at the Bietigheim-Bissingen factory, or net within 30 days. If the goods are received after the receipt of the invoice, the time limit for payment will begin at the date that the goods are received. The type of payment will be left to us. We cannot redeem invoices on a cash-on-delivery basis.
4. In the case of advance payment, we shall be entitled to demand a bank security.
5. It will only be possible to transfer claims against us with our written agreement.

## **VII. Warranty and Liability**

1. The supplier is responsible that the goods comply with our instructions, including display and labelling. Our order or commission will be carried out correctly and properly according to the current state of technological development.

2. We will notify faults or poor service of the delivery to the supplier as soon as they are discovered according to the conditions of a course of business in accordance with regulations. No. V 4 will apply accordingly. In the case of the delivery of defective goods, the supplier will be given an opportunity for subsequent performance (repair / subsequent delivery). We shall be entitled to choose here. The supplier will have the possibility of refusing the type of subsequent performance chosen by us, subject to the preconditions of § 439 par. 2 BGB. We shall be entitled to reduce the purchase price or to withdraw from the Agreement, if we have previously set a suitable time limit for subsequent performance unsuccessfully. In urgent cases, we shall be entitled to carry the subsequent performance out ourselves or to have it carried out by a third party, after informing the supplier. The supplier will have to compensate us for all expenses that have arisen.

Apart from this, we are entitled to demand compensation. This will apply to any breach of obligation. In the case of compensation, the supplier is obliged to compensate us for damage arising directly and / or indirectly as a consequence of a fault. This will also include compensation for damage arising from the fault. In principle, the supplier will only be liable for compensation if it has been culpable of the damage. The supplier will be liable independently of guilt in the case that a risk of procurement and / or a guarantee has been taken over.

3. In principle, the guarantee period will be two years from taking of delivery of the goods. It will be extended accordingly, if we are obliged by our customers to accept longer guarantee periods. If demands are made on us on the basis of recourse in the sense of §§ 478, 479 BGB, the deadlines regulated there will apply.

4. In the case of legal defects, the supplier will release us from the claims of third parties that may exist. The legal guarantee period will apply.

5. The warranty period for parts renovated or repaired within this period will begin to run again from the moment from which the subsequent performance has been carried out.

6. If costs arise for us as a consequence of defective delivery or other poor service, particularly transportation, material and work costs, the supplier must compensate us for them.

7. If a fault becomes evident within six months of the transfer of the danger, it will be assumed that it was already present at the time of the transfer of the danger.

8. If claims are made against us under product liability or similar principles of liability in accordance with foreign law, the supplier has to reimburse us for damages arising from this, in so far as its deliveries or its behaviour have been the cause of them. The supplier will renounce the plea of the statute of limitations with regard to these claims, in so far as claims can be made against us.

### **VIII. Industrial Property Rights**

The supplier is liable that no patents or other industrial property rights of third parties are damaged because of its delivery and its use by us. It will release us and our buyers from all claims arising from the exploitation of such industrial property rights. This will not apply in so far as the supplier has manufactured the goods supplied according to drawings, models passed over by us, or other descriptions or orders equivalent to them and does not know or, in relation to the products manufactured by him, cannot know that industrial property rights are damaged by them.

### **IX. Force Majeure**

War, civil war, export restrictions or restrictions to trade because of a change in the political conditions and strikes, lock-outs, disruptions to business, restrictions to business and other events that make it impossible or unreasonable for us to fulfil the Agreement, will be regarded as force majeure and will release us from the obligation to test and pass promptly for the period of their existence. The contractual partners will be obliged to inform each other about them and to adjust their obligations to the changed conditions in good faith.

### **X. Suppliers' Declarations**

1. The obligation to submit supplier declarations in accordance with VO / EG 3351 / 83A will be a significant component of Agreements according to these Purchasing Conditions. If long-term supplier declarations are used, changes to the original character must be notified to us with the relevant order confirmation, without being asked.
2. If the supplier declarations turn out to be insufficiently expressive or defective and we are obliged by the tax authorities to present an INF4 information sheet for this reason or other reasons, the obligation to draw up a perfect, complete INF4 information sheet about the origin of the goods, confirmed by the tax office, available to us immediately on request will exist.
3. If an additional charge is made on us or our customers by a tax authority or we or our customers suffer another pecuniary disadvantage through this and the error rests on incorrect original information from the supplier, the supplier will have to be liable for it.

## **XI. Custody / Property**

Material provided by us will remain our property. As such, it is to be stored separately and must only be used for our orders. The supplier will be liable for reductions in value or loss, even without fault. The goods that are manufactured with the material provided by us will be our property proportionately in the respective state of production. The supplier will keep these goods safe for us; the costs of keeping objects and materials safe for us will be included in the purchase price.

## **XII. Business Secrets**

The supplier undertakes to treat our orders and all the commercial and technical details associated with them as business secrets.

## **XIII. Concluding Terms:**

1. Secondary oral agreements must be in writing to be effective.
2. The transfer of rights and duties of the supplier arising from the Agreement made with us will require our written agreement to be effective.
3. If one of the terms is or becomes invalid, the other terms will not be affected by this.
4. The place of fulfilment is the place of delivery or execution stipulated by us; this will be Bietigheim-Bissingen for payments.
5. If the supplier is a registered trader, a legal entity in the sense of public law or a separate estate under public law, an action is to be brought at the Besigheim district court (Amtsgericht) or at the Stuttgart regional court (Landgericht) in the case of all disputes arising from this contractual relationship. We shall also be entitled to bring an action at the head office of the supplier.
6. German law will apply exclusively, with the exclusion of the laws concerning the international sale of movable goods.