

TD DEUTSCHE KLIMAKOMPRESSOR GMBH

GENERAL PURCHASE TERMS AND CONDITIONS

(LAST UPDATED AUGUST 2020)

- 1. Scope**
 - 1.1 Unless otherwise agreed in writing, solely these General Purchase Terms and Conditions shall apply for these and all future purchase orders/commissions.
 - 1.2 We do not acknowledge the General Terms and Conditions of the contractual partner/seller/supplier (hereinafter "Contractor"), unless we have expressly agreed to their application in writing.
 - 1.3 Differing or additional General Terms and Conditions of the Contractor shall also be deemed rejected even if we do not expressly reject those terms and conditions or accept the goods/services without reservation.
 - 1.4 Should the Contractor not agree to this, this must be stated immediately after receipt of our order.
 - 1.5 The General Purchase Terms and Conditions shall apply in particular for the sale and delivery of moveable items (hereinafter "goods"), independently of whether the Contractor produces the goods itself or procures them from suppliers (Sections 433, 651 Civil Code).
 - 1.6 Our General Purchase Terms and Conditions shall apply only for companies (Section 14 Civil Code), legal persons under public law and special funds under public law.
 - 1.7 References to the application of statutory regulations are for the purposes of clarification only. Therefore, the statutory regulations shall apply, insofar as they are not directly changed or expressly excluded in these General Purchase Terms and Conditions.
- 2. Order, offer**
 - 2.1 Our purchase orders are only binding, if we have placed them in writing, by email or by fax. The Contractor has to draw our attention to obvious errors (e.g. spelling and arithmetic errors) and incompleteness of the order including the order documents before accepting an offer we have submitted so as to permit correction or completion; otherwise the contract is deemed not concluded.
 - 2.2 Oral side agreements concerning the purchase order/commission are only binding, if we have confirmed them in writing, by email or fax.
 - 2.3 Order confirmations received by us late or modifications of our order by the Contractor shall be deemed to be a new offer and must be accepted by us expressly in writing, by email or by fax.
 - 2.4 The Contractor's offers must be submitted free of charge; cost estimates shall only be remunerated after prior written agreement.
 - 2.5 The Contractor shall be chosen on the basis of the following selection criteria: competitiveness, trust, environmental protection, region and conformity with valid legislation and ethical aspects.
- 3. Correspondence**

The Contractor has to quote the order number and the date of the purchase order/commission and the material designation and number assigned or notified by us in all correspondence.
- 4. Quality assurance system, CE certification**

The Contractor must maintain a quality assurance system, e.g. as per DIN ISO 9001 and/or ISO 14001. We are entitled to inspect the Contractor's system by arrangement during quality audits. The Contractor undertakes to carry out CE certification pursuant to the valid EU directives, draw up a corresponding EG conformity declaration and attach a corresponding CE mark to the goods. In so far as required, the Contractor shall involve a "body notified" by the EU for the conformity assessment.
- 5. Compliance, adherence to statutory provisions**
 - 5.1 We hereby point out that we are governed by the TICO compliance rules. We expect the Contractor to comply with the UN Guiding Principles on business and human rights, the internationally recognised minimum standards of the UN Global Compact and the core labour standards of the International Labour Organisation (ILO). It shall also impose this obligation on its suppliers and prove this upon request.
 - 5.2 Furthermore, the Contractor is obliged to comply with all the anti-corruption legislation applicable to the legal dealings between the Contractor and us. Every breach of 5.2 Sentence 1 in conjunction with this contract constitutes a breach of contract which, all further claims notwithstanding, entitles us to termination without notice.
 - 5.3 The Contractor undertakes to comply with all statutory provisions – in particular under the Minimum Wage Act – and prove compliance therewith to us upon request through corresponding documentation. The Contractor also undertakes to impose these obligations on its contractual partners for the fulfilment of the contractual duties to be rendered to us.
The Contractor shall hold us free and harmless from all claims asserted against us in the case of a breach by the Contractor of the Minimum Wage Act (in particular Section 13 Minimum Wage Act), the Delegation of Workers Act (in particular Section 14 Delegation of Workers Act), Social Code IV (in particular Section 28e Social Code IV) and Social Code VII (in particular Section 150 Social Code VII). This shall also apply, if such a claim should arise under further subcontracting and/or the involvement of employment intermediaries.
- 6. Subcontractors**

The involvement of subcontractors shall require our prior written consent. The Contractor has to impose all obligations on the subcontractors and ensure compliance thereof concerning the tasks they have taken on and owed by the Contractor to us.
- 7. Shipping, shipping costs, transfer of risk**
 - 7.1 The goods shall be shipped within the Federal Republic of Germany franco domicile to the location stated in the order at the Contractor's expense and risk. The pertinent destination is also the place of fulfilment. During shipping the pertinent in applicable tariff, transportation and packing provisions of the railway, road haulage, water-borne and air transportation etc. are to be complied with.
 - 7.2 Besides the shipping address, shipping documents must always include the order information (order no., order date, supply point, where appropriate the name of the addressee and the material designation and number assigned or notified by us). In so far as subcontractors are deployed, they have to state the Contractor as their client in correspondence and shipping documents and also state the order data.
 - 7.3 We are entitled to refuse acceptance of consignments, if we do not receive proper shipping documents pursuant to Point 7.2 by the day of receipt (in particular our order and/or material designation numbers are incomplete or missing), without our being in default of acceptance or receipt as a result. The costs resulting from the refusal of acceptance shall be borne by the Contractor. In the case of express and urgent goods consignments and parcel post a delivery note is to be enclosed in a sealed envelope with the goods. Should the goods be returned because of a missing or incorrect delivery note, the payment periods stated in Point 12.4. shall be prolonged by the period of the delay.
 - 7.4 Packaging, transportation and insurance of the goods shall be at the Contractor's expense. This shall also apply if the goods are returned. Upon request the Contractor has to take back the packaging material of the pertinent order pursuant to Sentence 1 at its expense.
 - 7.5 If we have agreed by way of exception to bear packing costs, we shall bear them only up to the acquisition cost of the material.
 - 7.6 The risk of accidental loss and deterioration of the goods shall pass upon delivery at the place of fulfilment. In so far as acceptance has been agreed, this shall be definitive for the transfer of risk.
- 7.7 Our further claims notwithstanding, the Contractor is entitled to part shipments / performances only with our consent.
- 8. Information about hazardous materials, product information**
 - 8.1 The items to be supplied are to be marked pursuant to the regulations of the Hazardous Substances Ordinance and the EC/EU Directives for Hazardous Materials/Preparations.
 - 8.2 The Contractor undertakes to provide us with all the necessary product information, to composition and durability e.g. safety data sheets, processing instructions, identification instructions, assembly instructions, industrial safety measures and specifications etc., including any changes thereto in good time before supplying/rendering the goods/services.
 - 8.3 The Contractor must meet energy efficiency criteria, and send us suitable information concerning the energy consumption of the product / service (e.g. energy efficiency, expected energy consumption, maintenance costs, energy marking) and also concerning the lifecycle costs of the article to be procured.
 - 8.4 The Contractor also undertakes to initiate all the necessary measures in good time so that the goods supplied to us meet the requirements of the EU directives on prohibited materials (ROHS) and the corresponding national regulations in the EU member states in the version as amended from time to time. This applies in particular for the avoidance of hazardous materials and the provision of information for disposal companies. If changes have to be made to the goods to be supplied so that the aforementioned legislation can be met, the Contractor undertakes to obtain our written consent before carrying out those changes. Any additional costs shall be borne by the Contractor.
- 9. Default, rescission**
 - 9.1 The delivery/performance date we state in the order is binding. The Contractor undertakes to inform us without undue delay, if circumstances arise and/or become apparent to it which indicate that the stipulated delivery/performance date cannot be met. At the same time, it shall name the expected delivery/performance date. The same applies in so far as the agreed quality cannot be supplied.
 - 9.2 In so far as the Contractor is in default, we shall be entitled to demand – besides our statutory claims – liquidated reimbursement of our default harm of 0.25% of the net price per full calendar day, but not more than 5% of the net price of the delayed goods. This shall be without prejudice to the Contractor's right to prove that we incurred no or a lesser harm.
 - 9.3 The Contractor shall be in default without express notification once the stipulated due date is missed. We shall be entitled to rescind the contract in so far as
 - the Contractor is in default with its performance and the default continues for more than two weeks after receipt of a written reminder in which we threaten or reserve rescission or
 - we can no longer be reasonably expected – with due consideration of the circumstances of the particular instance and the mutual interests – to continue the contract for another reason lying in the person of the Contractor.
 - 9.4 The Contractor can only cite the absence of necessary documentation/information to be supplied by us, if it has not received the same within a reasonable period of time despite written reminder.
 - 9.5 If participatory acts are required from us, the Contractor shall request the same with a reasonable deadline in writing and in good time.
 - 9.6 We can assert any agreed and forfeit liquidated damages up to when the final payment is due and payable, without our having to reserve the same pursuant to Section 341 Subs. 3 Civil Code.
- 10. Proof of performance and acceptance**

Any contractually stipulated proof of performance and acceptance is to be rendered free of cost for us and recorded by both parties in writing.
- 11. Weights and quantities**

Our further claims notwithstanding, in the event of discrepancies in weight, the weight established by us upon the inspection of incoming goods shall apply, unless the Contractor proves that the weight calculated by it when the risk passed was measured correctly in accordance with a generally accepted principle. This also applies analogously for quantities.
- 12. Prices and terms of payment**
 - 12.1 Invoices have to meet the pertinent valid statutory requirements. The invoice must state the order number. Should the order number be missing, incomplete or wrong, and this delays our processing during our normal course of business, the payment periods stated in Paragraph 4 shall be prolonged by the duration of the delay. The invoice has to be sent separately to the central invoice address stated in the purchase order/commission or, subject to prior agreement, in electronic form to the stated central email address (invoice@tdkd.de).
 - 12.2 Unless agreed otherwise, the price includes all the Contractor's performances and ancillary performances (e.g. assembly, installation) and all ancillary costs (e.g. costs for packaging, transportation including transport and liability insurance).
 - 12.3 All customs and import duties of the country of destination, and all other fees, taxes and costs relating to the contract shall be borne by the Contractor.
 - 12.4 The agreed price is due and payable within 30 calendar days from complete delivery and performance (including any acceptance if agreed) and receipt of a due and proper invoice. The Contractor shall grant us a 3% cash discount on the net amount of the invoice upon payment within 14 calendar days, unless agreed otherwise.
 - 12.5 Our unconditional payment shall not constitute acceptance or receipt of the goods with waiver of any default rights that we may have.
 - 12.6 For bank transfers, payment shall be deemed effected in so far as the transfer order is received by our bank in such good time before the payment period expires that given normal processing receipt of the payment by the Contractor can normally be expected before the payment period expires.
 - 12.7 We are entitled to return obviously damaged goods immediately. In such cases, the payment period shall not commence until receipt of a due and proper invoice or receipt of defect-free goods.
 - 12.8 We shall not owe any post-maturity interest. Default interest shall be 5 percentage points above the base rate per annum. The onset of default shall be governed by the statutory provisions subject to the condition that a written reminder by the Contractor shall always be required.
 - 12.9 Should the payment be rendered in a foreign currency, the Contractor shall be obliged to return to us the rendered euro payment in euros – independently of any exchange rate changes that may have since occurred – in the case of the contract being rescinded.
- 13. Notices of defects**
 - 13.1 The commercial duties to examination and notification shall be governed by the statutory regulations (Sections 377, 381 Commercial Code), subject to the following condition: we shall carry out an incoming goods inspection only concerning apparent (transportation) damage and externally apparent deviations in identity or volume. We shall report such defects without undue delay after delivery.
 - 13.2 Otherwise, we shall give notice of defects without undue delay, as soon as they are determined during the normal course of business. In all cases, our complaint (notice of defect) shall be deemed as being without undue delay and in good time, if it is received by the seller within 5 working days.
- 14. Warranty claims, Contractor's liability, time bar**

- 14.1 The Contractor warrants that its goods/services have the individually warranted properties and the contractually agreed quality which are suitable for the contractually presumed use, that they are not impaired in terms of value or fitness for the particular purpose, and that they comply with the state of the art as well as current statutory and official regulations.
- 14.2 If the goods/services do not satisfy the preconditions in Point 14.1 or should they be defective for any other reasons, we can demand that the Contractor render subsequent performance free of cost for us and without undue delay and reimburse us for all expenses we incur due to the subsequent performance; this shall be without prejudice to the asserting of further statutory warranty rights.
- 14.3 If the Contractor fails to render the subsequent performance – at our option by rectifying the defect or delivery of defect-free goods – within a reasonable grace period we have set, we can rectify the defect ourselves at the Contractor's expense; in that case we are also entitled to demand a reasonable advance payment. If the subsequent performance by the Contractor has failed or is unreasonable for us (e.g. because of particular urgency, risk to operational safety or disproportionate further harm) no grace period need be set; we shall inform the Contractor about such circumstances without undue delay and where at all possible also before the self-remedy.
- 14.4 The statutory and/or contractually agreed claims and rights for defects in materials or title shall be time barred as per the statutory regulations. Claims under defects in title shall not be time barred under any circumstances as long as the third party can still assert the right – in particular due to want of time bar – against us. This shall be without prejudice to longer statutory periods.
- 14.5 In addition to cases in which the period of limitation is stayed by law and the provision in Point 14.5 Sentence 2 notwithstanding, the limitation period for claims and rights for defects shall also be stayed during the time between giving notice of defects and completion of the remedial action. The time bar shall commence anew for entirely or partially new supplied, replaced or rectified goods or performances.
- 14.6 The Contractor shall inform us about incidents of force majeure or other events not foreseeable when the contract was concluded (e.g. unforeseeable operational, transport or dispatch problems of any nature, fires, floods, machine defects, public-authority measures, manpower shortages, transportation delays, lawful strikes and lock-outs, unfulfilled, incorrect or untimely delivery by the supplier) without undue delay. If such events essentially hinder or prevent delivery and the delivery/acceptance problems lasts for more than 4 weeks – from notification pursuant to Sentence 1 – either party shall be entitled to rescind the contract. This shall be without prejudice to asserting any statutory rights.
- 15. Third-party intellectual property rights**
- 15.1 Pursuant to the provision in Paragraph 2, the Contractor shall be liable that no third-party rights (in particular patents, utility models, copyrights or other rights) in the European Union or in other countries in which it manufactures or has its products manufactured are breached in conjunction with its delivery. We in turn are not obliged to carry out investigations as to whether there are any third-party intellectual property rights.
- 15.2 If we are resorted to by a third party for breach of the rights stated in Paragraph 1, the Contractor is obliged to hold us free and harmless from the corresponding asserted claims and to reimburse us all the necessary expenses in conjunction with our being resorted to; this also includes the defence of potential claims and measures of third parties. The indemnification and reimbursement claim pursuant to Sentence 1 shall not apply, if and in so far as the Contractor proves that it is not answerable for the breach and would not have been aware of the same when exercising the care and duty of a diligent merchant.
- 15.3 Even if the Contractor has industrial property rights, we or third parties we engage may carry out repairs to the supplied item.
- 15.4 This shall be without prejudice to further claims for defects in title to the goods supplied to us.
- 16. Product liability, insurance**
- 16.1 In so far as the Contractor is answerable, in particular in consideration of a concluded quality assurance agreement, for property damage or personal injury, it is obliged to hold us free and harmless from the asserted claims for damages upon first demand to the extent that the cause lies in its sphere of control and/or administration and it is itself liable in external dealings. In this context, the Contractor is also obliged to reimburse any expenses which arise from or in conjunction with a recall action we undertake. We shall inform the Contractor about the content and scale of the recall actions to be carried out - in so far as possible and reasonable - and give it an opportunity to comment on the matter. This shall be without prejudice to further statutory rights. The indemnification claim shall not be time barred until the date on which the claims asserted against us are time barred.
- 16.2 The Contractor undertakes to maintain liability insurance on the standard terms and conditions and with sufficient cover during the entire term of this contract and prove the insurance cover to us without undue delay upon request. This shall be without prejudice to the assertion of damages claims not covered by the insurance policy.
- 17. Information**
- All information including drawings and other documentation which we need for setting up, operating, maintaining or repairing the supplied item are integral parts of the contract and to be provided to us by the Contractor by delivery/performance date stated in the order unsolicited and free of cost. This shall be without prejudice to Section 434 Subs. 2 Commercial Code.
- 18. Entry to and driving on the works premises**
- The instructions of our expert staff are to be heeded when entering or driving on our works premises. In addition, the Contractor has to inform itself and comply with the pertinent locally valid works regulations (e.g. safety regulations).
- 19. Liability**
- 19.1 Unless arising otherwise from these General Purchase Terms and Conditions including the following provisions, we shall be liable for a breach of precontractual, contractual and extra-contractual duties under the pertinent statutory provisions. Liability for damages - regardless of their legal grounds - shall arise for intention and gross negligence. In the case of minor negligence, we shall only be liable
- for losses relating to fatalities, injuries and impairment of health;
 - for damage from the breach of cardinal duties (duties whose fulfilment renders the proper execution of the contract possible in the first place and on whose compliance the client may generally rely).
- 19.2 In so far as we are liable for damages under the above provisions, this liability shall be limited to losses which we foresaw as a possible consequence of a breach of contract when concluding the contract or should have foreseen if we had applied due care and attention.
- 19.3 The above liability exclusions and restrictions shall apply to the same extent in favour of our executive bodies, statutory representatives, employees and other agents.
- 20. Supplier recourse**
- 20.1 We have statutory claims within the supply chain pursuant to Sections 478, 479 Civil Code besides our warranty rights. We are therefore in particular entitled to demand that type of subsequent performance which we owe our client. This shall be without prejudice to our option pursuant to Section 439 Subs. 1 Civil Code.
- 20.2 We shall notify the Contractor in good time before acknowledging or fulfilling a warranty claim asserted by one of our clients and request in a brief presentation of the matter a written response. If the response is not forthcoming within a reasonable period, the Contractor is obliged to reimburse us the resulting harm.
- 20.3 Our claims under supplier recourse shall also apply if the goods are processed by us or one of our clients, e.g. by installation in another product, before being sold to a consumer.
- 21. Waste removal**
- In so far as the Contractor's deliveries/performance lead to waste products within the meaning of waste legislation, it shall recycle or dispose of the waste – subject to written agreement to the contrary – at its own expense pursuant to the waste legislation regulations. Ownership, risk and the waste-law responsibility shall pass to the Contractor at the time the waste arises.
- 22. Confidentiality**
- 22.1 The Contractor undertakes to keep confidential any information, knowledge and documentation, for example, technical and other data, measured values, techniques, business experience, business secrets, know-how, drawings and other documentation (hereinafter: "information") received from us or disclosed in any other way from our scope or the scope of another group company, and not to disclose such information to third parties and to use it for the purpose of executing the respective purchase order/commission only. The Contractor undertakes to return all information delivered to it in a tangible form such as documents, samples, specimens, or the like without undue delay - upon our request - without retaining any copies or notes – and to delete its own notes, compilations and evaluations containing information without undue delay upon our request and shall confirm this to us in writing. We reserve title and all and any industrial property rights to our information. After the order has been completed, the information is to be returned unsolicited and free of cost to us.
- 22.2 The Contractor may not provide the information to third parties for inspection or other use or reproduce the same without our express written consent. This shall also apply for documentation which we provide for printing orders. The items produced from the documentation may not be supplied to third parties without our express written consent.
- 22.3 The above confidentiality obligations shall continue to apply after the contractual relationship ends and shall not lapse until and in so far as the pertinent information has become generally known.
- 23. Planning documents**
- Drawings, drafts etc. produced by the Contractor from our specific information shall become our unrestricted property without additional remuneration, independently of whether they continue to remain in the Contractor's possession. Differing declarations by the Contractor, e.g. on documentation furnished to us, are not binding.
- 24. Advertising material**
- The business relationship with us may only be cited in information and/or advertising material with our prior express, written approval.
- 25. Retention, off-set, assignment**
- 25.1 The assertion of a retention right and off-set with counter-receivables are only permissible, if the counter-claims or the set-off counter-receivables underlying retention right are undisputed or have been established in law.
- 25.2 The Contractor's assignments beyond the scope of Section 354 a Commercial Code are excluded; exceptional cases shall require our written consent to be effective.
- 26. Reservation of title**
- 26.1 The goods have to be passed to us unconditionally and without regard to payment of the price. Should we accept the Contractor's offer of transfer conditional on payment of the purchase price in a particular case, the Contractor's reservation of title shall lapse at the latest with payment of the purchase price for the supplied goods.
- 26.2 We remain authorised to re-sell the goods during the normal course of business also before payment of the purchase price upon advance assignment of the resulting receivable (in the alternative application of ordinary reservation of title extended to re-sale). Excluded are thus at any rate all other forms of reservation of title, in particular extended, transferred and extended to further processing).
- 26.3 The processing, combining or blending (further processing) by the Contractor of provided items shall be carried out for us. The same applies for further processing of the supplied goods by us, so that we shall be deemed the manufacturer and acquire title pursuant to the statutory regulations at the latest with the further processing.
- 27. Legal forum and governing law, trade terms, data protection**
- 27.1 If the Contractor is a merchant, public-law legal entity or a special fund within the meaning of the German terms or is resident outside Germany, then our German registered offices shall be the exclusive national and international legal forum for all contractual or other disputes under the pertinent contractual relationship. However, we may sue the Contractor before the court competent for its registered offices or before any other court which is competent under the statutory national or international provisions.
- 27.2 Standard trade terms are to be interpreted as per the pertinent valid Incoterms.
- 27.3 All legal dealings between the Contractor and us shall be governed by the law of the Federal Republic of Germany with exclusion of the reference provisions of international private law. The application of the treaties on the international sale of goods (CISG) is hereby excluded.
- 27.4 If individual provisions of these General Purchase Terms and Conditions are or become void, this shall not affect the legal effectiveness of the other provisions. The same applies for any gaps in the General Purchase Terms and Conditions.
- 27.5 The Contractor is aware that we store data from the contractual relationship pursuant to Section 28 Federal Data Protection Act for the purpose of data processing and that we reserve the right to pass on the data to third parties (e.g. insurance companies) in so far as required to fulfil the contract.