

TERMS AND CONDITIONS OF PURCHASE Pro-klima d.o.o., Samobor, Gradna 78E (9/16)

1. General provisions

- a). These terms and conditions are applicable to business transactions with companies, legal entities under public law and special funds under public law.
- b). The terms and conditions hereinafter are exclusively authoritative for our orders. General terms and conditions of the supplier are not accepted. All declarations in the offer or in the acceptance of the order (order confirmation) of the supplier, deviating from the terms and conditions hereinafter require our expressly acceptance to their validity in writing. Silence or acceptance of a consignment does not constitute an agreement.
- c) Unless otherwise agreed in case of reference to INCOTERMS, INCOTERMS ® 2010 apply.

2. Offers

Offers have to correspond to our requests for quotes; they are free of charge and not binding for us.

The resulting correspondence shall only be carried out with the offices, mentioned on the face with reference to our quote / order information.

3. Confirmations

Orders and agreements are only binding if placed or confirmed by us in writing.

4. Prices

- a). The prices shown in the order are binding. A change of prices requires a written agreement. Prices are fixed prices and include everything which has to be performed by the supplier for the satisfaction of the obligation to deliver to the agreed receiving place. The value-added tax is not included in the prices. Freight, packing and miscellaneous costs are only assumed by us if expressly agreed on. The supplier has to take back and to dispose the packing at his own expense.
- b). Payments are exclusively made in Euro.
- c). We are only in default of the payment after a prior written reminder.
- d). The supplier shall not grant us more unfavorable prices than other customers, as far as the terms and conditions are comparable with the special case.

5. Force majeure

Events of force majeure, in particular war, civil war, export restraints and trade restrictions respectively as a result of changes of the political circumstances, as well as strikes, lockouts, breakdowns, cutting back of operations, natural disasters or similar events, which make the performance of contract impossible or unacceptable for us, release us for the duration of the existence from the obligation to take delivery on-time. Claims for damages cannot be affiliated herefrom. The parties hereto are obliged to immediately notify each other hereof and to adjust their obligation in accordance with the circumstances of good faith.

6. Delivery dates

- a). The agreed delivery dates are binding and thus to be met accurately for this reason.
- b). The ordered goods have to be received at the receiving place stated by us at the date. The statutory regulations apply if the supplier is in default with the delivery. In particular, the supplier automatically is in default in case of a culpable non-compliance with the agreed delivery date. After the effectless expiration of the period of grace, we are entitled to withdraw from the contract, to claim a contract penalty of 0.5% of the net order value for each commenced week, but at most 5% of the net order value and furthermore, to claim for damages.

- c). Our claim for delivery persists, regardless of the delay in performance, without the requirement of a specific declaration. If quantitative changes arise due to the delay in performance, the supplier has to satisfy this. We are not obliged for acceptance before the expiration of the delivery date.

7. Advice notes

The supplier is obliged to submit a special advice note for every consignment to our respective purchaser immediately after departure of the delivery. This note shall include the exact details about the content, e.g. quantity, measures, weights etc. and the order number. In any event, we must receive this note before the arrival of the consignment.

8. Risk taking

In either case, the risk of compensation is passed over to us only with acceptance of the delivery.

9. Billing

- a). Invoices shall be immediately addressed to us in duplicate and completed in such a way that it can be checked against the delivery documents. Copies of invoices shall be specially marked.
- b). For monthly deliveries the invoice shall be issued by the 03rd day of the following month. Invoices which were not issued by the 03rd day after the delivery month are paid with the same terms and conditions and without an interest payment not until the end of the month after the receipt of the invoice.
- c). The quantities, measures and number of items, determined by us, are decisive for the settlement. We are only accepting the weights determined by us, in case of weight differences. But the supplier shall be able to furnish evidence about his determined quantities, measures and number of items at any time.

10. Method of payment

- a). We pay at our own option after the receipt of invoice and goods, complete and free of defects within 10 days subject to deduction of a 3% cash discount or 30 days net.
- b). The payment shall be deemed to be paid within the agreed time limit if we have provable placed the payment order or mailed the check to the supplier within the aforementioned time limit.
- c). If the invoices are not furnished with the details designated under item 7, the time limit of 10 days for the cash discount deduction initially commences only on the day when all of the details required by us are available. We are not cashing registered c. o. d. consignments; the resultant costs are at the expense of the supplier.

11. Defects of quality

- a). We are unrestricted entitled to statutory claims for defects of quality and are also entitled to choose the kind of supplementary performance (rectification of defects or replacement).
- b). The supplier accepts the obligation that the goods, including presentation and price marking, comply with our details. Our order is carried out professionally and appropriately in accordance with the respective state of the art.
- c). The supplier warrants for the duration of 36 months after the production date. The supplier shall only deliver goods to us which are not produced more than 3 months ago. For goods which are not furnished with a production date, the supplier warrants for 36 months after delivery of the goods. The statutory periods for the assertion of the defense under the statute of limitation and the statute of limitations are running only after expiration of the agreed warranty period.
- d). We only examine the goods for accuracy, completeness and capability. The defense of a late examination and notice of defects (section 377 German Commercial Code) is excluded. This does not apply for obvious defects.

e). The payment of the goods does not represent an acknowledgement of the delivery as contractual and free from defects.

f). If material defect appears within 6 months from passing of risk, it shall be assumed that the object has already been defective at the time of passing of risk, unless the assumption is inconsistent with the kind of object or the defect of the delivery as contractual and free of defects.

12. Liability

a). The supplier is liable towards us in accordance with the statutory regulations. We are not accepting an exclusion of liability or a limitation of liability.

b). The supplier shall be deemed to be the producer of the goods to be delivered in the internal relationship in terms of the Product Liability Act. The supplier releases us from all third party claims, which are asserted against us, due to a defect of the goods in accordance with the German Product Liability Act, or Product Liability Act of the EU member states or of a third state, if or as far as the cause of damage was included to the production sector and/or to any other area of responsibility of the supplier.

c). We oblige ourselves to inform the supplier in due time and to gain access to the corresponding documents if third parties file a claim concerning the goods originating from the supplier. Then the supplier has to declare within ten (10) working days whether we shall defend us against the reproaches or accept these reproaches. The supplier is also obliged within this scope to reimburse possible expenses, arising from or in conjunction with a recall action, legitimately carried out by us.

We shall notify the supplier on request, if possible and reasonable, about the contents and scope of the recall action to be carried out and give him the opportunity for comments.

13. Industrial property rights / Defects of title

a). The supplier warrants that the goods are exempt from defects of title, in particular third party's rights. Limitation period is 15 years.

b). If claims are filed against us due to the use or possession of the delivered goods concerning a trademark infringement, copyright or other industrial property rights, the supplier shall release us from these claims. The supplier immediately informs us if an industrial property right infringement – of any kind – appears to be possible. The obligation of release of the supplier refers to all expenses, legitimately arising from or in conjunction with the claiming of third-parties.

c). If third-parties assert legitimate claims from industrial property rights the supplier shall either effect a license, modify the relevant product accordingly on his own expenses, replace the product with a product without industrial property rights, or if this measure is economically counterproductive, to revoke the product with reimbursement of the expenses.

d). The statutory provisions apply in other respects.

14. Legitimacy of corporate action / Lump sum damages

a). Supplier shall pledge to adhere to the laws and regulations of the Federal Republic of Germany and the European Union and to base its conduct on the legitimacy benchmarks of these statutory instruments.

b). Supplier shall particularly pledge to be mindful of the laws and regulations of the Federal Republic of Germany and the European Union of the protection of fair competition and to the anti-trust laws.

c). In case of a culpable violation of the provisions of competition law or anti-trust law, Supplier shall pledge to pay a lump-sum compensation to PRO-KLIMA.

aa). In case of severe violations, e.g. price agreements, quota agreements or market and customer distributions, Supplier shall pledge to pay a lump-sum compensation to PRO-KLIMA of 10% of the total annual net turnover (here, the turnover of the previous year or, if no such turnover is present, the current annual turnover of the scope of delivery concerned by this legal violation shall always be the basis of calculation) for each case of violation.

bb). In case of other violations, supplier shall pledge to pay a lump-sum compensation of 3% of the total annual net turnover (here, the turnover of the previous year or, if no such turnover is present, the current annual turnover of the scope of delivery concerned by this legal violation shall always be the basis of calculation) for each case of violation.

d). Further statutory claims by us, claims for compensation by us against Supplier arising from the violation and the assertion of further damages shall remain untouched by this and may be asserted independently from the damage lump-sum. When asserting them, the possibly accruing damage lump-sum shall be offset against the asserted damage. Supplier shall be permitted to prove that we suffered only an insignificant damage or no damage at all.

e). In case of a legally binding conviction of Supplier or if the conviction is not carried out solely due to a principal witness regulation, it shall be assumed that Supplier is responsible of the violation.

15. Manufacturing documents / Initial deliveries

The drawings, designs or other presentations, whether in original or in copy, put at the disposal of the buyer, remain our property and must not be used for other purposes, copied or delivered to third parties; they shall be immediately returned to us after execution of the order.

If this concerns an initial delivery according to a drawing or sample, 5-10 type samples are to be initially sent in for appraisal.

16. Final provisions

a). The laws of the Federal Republic of Germany apply for all privity arising from the supply contract. The UN Convention on the Contracts for the International Sale of Goods of 11th April 1980 (CISG) does not apply.

b). If one of the provisions should be or become ineffective, this shall not affect the validity of these Terms and Conditions of Purchase in other respects.

c). Place of performance is the plant in Mainburg.

d). Place of jurisdiction for commercial business is the Local Court for the place of business of the buyer. We are also entitled to choose the general place of jurisdiction of the supplier.