

**KALDEWEI**



**GENERAL TERMS AND CONDITIONS  
OF PURCHASE OF  
FRANZ KALDEWEI GMBH & CO. KG**

# GENERAL TERMS AND CONDITIONS OF PURCHASE OF FRANZ KALDEWEI GMBH & CO. KG

## I. GENERAL

1. All Kaldewei purchase orders shall be based solely on these Terms and Conditions of Purchase. Terms and conditions of Supplier which contradict, supplement or deviate from these Terms shall not apply unless we agree to their validity expressly and in writing. These Terms and Conditions of Purchase shall also apply even if we, being aware of terms and conditions of the supplier which contradict, supplement or deviate from these Terms and Conditions of Purchase, accept performance without reservation, or if reference to the applicability of Supplier terms and conditions has been made in the offer or the order confirmation.
2. Orders of equipment and systems shall additionally be subject to our "Supplementary Terms and Conditions for the Purchase of Equipment and Systems".
3. These General Terms and Conditions of Purchase, as amended from time to time, shall also apply to repeat and follow-up orders issued under current contracts.

## II. OFFER, ORDERS, CONTRACT FORMATION, OFFER DOCUMENTS

1. No order shall be binding unless issued, or confirmed by us, in writing. Any deviations from these Terms and Conditions of Purchase shall require our prior written consent. Kaldewei shall not be bound by any supplementary oral agreements.
2. Offers of Supplier shall be based strictly on our requirements; any variance in the offer – particularly inability of Supplier to accommodate any or several of our requirements – must be specified expressly and in writing.
3. Supplier shall confirm acceptance of our orders promptly and in writing stating price, delivery date and order number.
4. All intellectual property and copyrights relating to the drawings, illustrations, calculations, descriptions, models, tools and other documents and resources, which we make available to Supplier, shall be vested in Kaldewei. Supplier shall not be permitted without our express consent to make available or disclose any of the above or their content to third parties, or to use, or permit the use of, them for any purpose other than as specified by us. Supplier shall return the aforesaid items of its own accord if no longer required in the proper course of business.
5. Supplier shall not be permitted without our written consent to delegate the execution of orders, or material parts thereof, to independent third parties.

## III. PRICES, BILLING, PAYMENT TERMS, SET-OFF

1. Prices shall remain as stated in the order. Unless otherwise expressly agreed in writing, all prices shall include delivery to the shipping address specified in the order, as well as packaging and insurance.
2. Prices shall remain as stated in the order and shall not be subject to variations. Unless otherwise agreed in writing, prices shall include VAT and import duties. The same shall apply to unit and package prices.
3. Invoices shall be sent separately, enclosing a clearly marked duplicate. Each invoice must show our order number and order date and include the mandatory information as set out in Section 14(4) of the German VAT Act.
4. Unless otherwise agreed, payment shall be net within 30 days from the date of invoice, or within 14 days from the date of invoice applying a 4 %

discount. The period agreed for payment shall begin from receipt of a formal and transparent invoice (see item 3), but not before receipt of delivery/performance of service.

5. We shall have the right, without loss of agreed discounts, to set off or retain payments on grounds of material defect or defect of title.
6. All payments shall be subject to adjustment and refund where amounts are found to be incorrect or objections are raised upon subsequent invoice verification, and to due receipt of the goods. Payment for supplies or services shall not be construed as acceptance of performance in conformity with the supply contract.

## IV. DELIVERY DATE

1. Time shall be of the essence of our order. Where no delivery time is specified, delivery shall be made without delay.
2. Supplier shall be required to notify us without undue delay in writing of any existing or foreseeable circumstances which may delay the delivery, irrespective of whether these events are beyond Supplier's control.
3. In the event of a delay in delivery, we shall have the right to pursue statutory claims. Specifically, we shall be entitled, following expiration of a reasonable grace period, to claim damages for non-performance.

## V. DELIVERY, PART DELIVERIES, PACKAGING, DELAYED ACCEPTANCE

1. Unless otherwise agreed in writing, delivery shall be DDP to the shipping address stated in the order. Each delivery shall be accompanied by a single packing note detailing the contents and our order number.
2. Part deliveries or part performance shall require our express written consent.
3. All goods must be adequately packed for the mode of delivery and type of goods, and protected from any damage in transit. Unless otherwise agreed, Supplier shall load, store and secure the goods fit for transport. All cargo shall be loaded in such a way that damage to any goods or items, whether or not shipped to us, is avoided during unloading. This shall not affect any agreements made on the passage of risks.
4. All packaging shall be provided by Supplier and shall be returned only where expressly agreed in writing. Transport costs for the return of packaging shall be borne by Supplier.
5. We shall not be liable for any delay in performing, or failure to perform, any of our contracted obligations if, and to the extent, performance is delayed or prevented due to an event of force majeure or any other unforeseeable and serious cause that is beyond our reasonable control and occurring without our fault or negligence, including, but not limited to, business disruptions of any kind, strikes and lawful lockout. In such case, we shall be released from our obligations hereunder, or where hindrance is of a temporary nature, performance shall be suspended for the duration of the event.

## VI. QUALITY STANDARDS

1. All goods delivered shall fully conform to the specifications and other details and descriptions quoted in the order, comply in all respects with the prevailing legal requirements, safety engineering considerations, pertinent directives and guidelines issued by the relevant professional associations, health and safety inspectorates and the TÜV (German Technical Control Board),

and be of the very best design, materials and workmanship based on current standards released by the Association of German Engineers, VDI, and its subgroups as well as applicable national and international standards (e.g. DIN, CEN or ISO), each as amended from time to time, and be capable of any standard of performance specified in the order. In the execution of the order, Supplier further undertakes to observe and comply with all environmental legislation and regulatory requirements in the procurement of goods, works and services, specifically the provisions of the REACH Directive (EC) 1907/2006.

2. At our request, or if required by our customers, Supplier shall introduce, prepare and maintain material safety data sheets and provide any other proof of product and/or manufacture for the goods to be supplied, and to furnish us with any and all information, data and documents which we may require to satisfy customer expectations.
3. Supplier shall be required at our request to submit to us five samples with initial sample test reports as well as five specimens with data sheets. The qualities and characteristics of the samples and specimens supplied, along with the information in the data sheets, shall be warranted. Supplier shall further be obligated to maintain comprehensive and efficient quality assurance systems to verify and ensure reliable production of the agreed quality and properties, and to furnish proof thereof if so requested.

## VII. DEFECT INSPECTION, WARRANTY

1. We shall be obligated to inspect the delivered goods within a reasonable time for any variation in quality and/or quantity. Defects shall be deemed duly notified where Supplier receives our written claim within five working days from receipt of delivery or, for hidden defects, from their discovery. We shall only be required to inspect deliveries for correct quantity, identity and damage in transit. In this respect, Supplier shall waive any further statutory requirements (specifically as defined in Section 377 of the German Commercial Code, HGB) for incoming goods inspection. Where defects are discovered during spot checks, we shall have the right, at our discretion, to reject the entire delivery without further inspection or to conduct, either ourselves or through a third party, a proper inspection at Supplier's expense.
2. Prior to delivery, Supplier shall examine the goods thoroughly and, in particular, ensure that they comply in all respects with the specifications in the order and are free from all defects.
3. We reserve the right and shall be entitled in the event of non-conformance with warranted specifications or of defects that affect product usability, however minor or insignificant, to withdraw from the contract and claim damages in lieu of performance.
4. Our statutory rights to claim for defects may not be excluded or restricted. Where goods are supplied under a contract for the sale of goods or for work and materials, we may, within a reasonable time, require Supplier to remedy the defect to our satisfaction or to supply replacement goods free of defects, at our discretion. Where Supplier fails to perform in due time or circumstances do not permit the opportunity to remedy the defects without risk of incurring unreasonable loss, we shall have the right – irrespective of applicability of the Sale of Goods Act – to remedy the defect ourselves, or have it remedied, at Supplier's expense and risk. Under the Sale of Goods Act, this shall not apply to defects due to circumstances for which the Supplier is not responsible. In such case, Supplier shall be liable for all cost and charges incurred. Specifically, Supplier shall bear all cost and charges in connection with the discovery and rectification of defects, including expenses incurred by us, particularly inspection, removal of defective goods and installation of

replacements, labour, material, transport and any other cost associated with subsequent deliveries and rectification of defects. Supplier shall also be liable for additional expenses where delivery is returned to an address other than the place of performance, unless the costs incurred are unreasonable or excessive. Supplier shall not be entitled to reject our choice of subsequent performance, or subsequent performance as such, on the grounds that it involves unreasonable expense, unless the cost of subsequent performance (as chosen by us) exceeds the original purchase price of the defective goods by more than 20 %.

5. We do not accept any restriction of our statutory rights to claim for damages, neither in respect of the scale of fault nor in terms of the scope and amount of liability.
6. In all other respects, the law on defective products shall apply. This does not affect our right to further claims for damages.
7. Claims for defect, irrespective of legal basis, shall be subject to a limitation period of four years. This period extends to and includes claims which are unrelated to a defect. The limitation period for defective products resulting in subsequent performance shall start afresh from completion of subsequent performance. This does not affect longer statutory periods of limitation nor any further provisions on the suspension of expiry and the suspension and recommencement of limitation periods.

#### **VIII. PRODUCT LIABILITY, INDEMNITY, PUBLIC LIABILITY INSURANCE**

1. Supplier shall indemnify us against any and all third-party claims, demands, damages, costs and expenses under the Manufacturer's and Product Liability Act insofar as the defect resulting in liability is attributable to a Supplier product and Supplier is responsible for the defect. Indemnity shall include all costs incurred for a product recall.
2. Liability of Supplier for damage or loss as defined in clause 1 shall include reimbursement of costs and expenses specified in Sections 683, 670 of the German Civil Code (BGB) as well as Sections 830, 840, 426 BGB, where these are associated with a required product recall. Supplier shall be advised – where possible and reasonable – of the content and scope of our product recall and be given opportunity to make representations. This does not affect any other statutory claims.
3. Supplier shall also advise us of any risks that may result from improper use of its products.
4. Supplier shall maintain adequate insurance against product and public liability to a value of at least EUR 5m per loss, damage or injury. This does not affect any further claims for damages.

#### **IX. CONFLICTING EXCLUSION OF RETENTION AND SET-OFF RIGHTS, ASSIGNMENT OF CLAIMS**

1. In the event of defective performance, we shall be entitled to withhold payment in full unless otherwise required by the principle of good faith.
2. The assignment to any third party of Supplier claims against us shall require our written consent to be legally effective.
3. Our statutory rights to set-off and to enforce retention of title may not be excluded or restricted.
4. Supplier shall have the right of retention only where its counterclaims have been awarded in a final and absolute judgement, are undisputed or have been acknowledged by us. Performance may be withheld only where counterclaims of Supplier arise under the same contract with us.

#### **X. RETENTION OF TITLE**

Retention of title shall be limited to simple reservation of ownership. We expressly reject any expanded or extended reservations of title or multiple reservations.

#### **XI. INTELLECTUAL PROPERTY RIGHTS**

1. Supplier warrants that no rights of third parties, particularly no industrial property rights, are infringed in connection with its delivery. This extends to the places of production and delivery as well as to all countries in which the products of Supplier or KALDEWEI products with fitted or integrated Supplier products are sold or supplied.
2. Supplier shall fully indemnify us and hold us harmless against any and all third-party actions, claims and demands incurred in respect of alleged or actual infringement of any intellectual property rights relevant to the goods supplied, to the extent that Supplier is at fault. In such case, Supplier shall be liable for any loss, damage, costs or expenses incurred by us with respect to, or in connection with, such claims.

#### **XII. STATUTORY AND OTHER REQUIREMENTS**

1. For the duration and in the performance of a contract concluded with us, Supplier warrants that the supplied goods comply in all respects with all relevant laws and regulations and any other statutory provisions and trade practices which may be in force at the time and are applicable to Supplier's business, including, without limitation, in respect of design, development, manufacture, sale, transport, export and certification of the products. This particularly includes applicable prevention of accidents provisions, industrial safety, environmental and other provisions, applicable technical standards and generally accepted technical rules. Upon request, Supplier shall confirm to us in writing compliance with the aforesaid laws, etc. Supplier shall reimburse us for all damages and costs incurred as a result of culpable non-compliance with the above regulations and indemnify us against all third-party claims made in this context.
2. Supplier confirms that its employees are paid at least the national minimum wage stipulated for its industry and shall ensure that its subcontractors comply with relevant regulations. Supplier shall indemnify us against any claims arising from, or in connection with, any violation of the National Minimum Wage Act.

#### **XIII. EXPORT CONTROL, CUSTOMS, ORIGIN OF GOODS**

1. Supplier shall be required to advise us in its business documents of any approval and licensing requirements for the (re-)export of its goods under German, European and U.S. export and customs regulations, as well as under the export and customs regulations of the country where the goods originate. Supplier's offers, order confirmations and invoices for products shall include at least the following information:
  - the export list number in accordance with Appendix AL to the German Foreign Trade Regulations or comparable list numbers of relevant export lists,
  - for U.S. goods, the export control classification number (ECCN) in accordance with the U.S. Export Administration Regulations (EAR),
  - the non-preferential origin of Supplier's goods and their components, including technology and software,
  - whether the goods are transported through, manufactured or stored in the U.S., or are manufactured using U.S. technology,
  - the statistical product number (HS code) of Supplier's goods, and
  - a contact person at Supplier's company for any queries we may have.

At our request, Supplier shall provide us in writing with any other export data relating to its goods and their components and advise us without undue delay in writing (prior to delivery of the relevant goods) of any changes and amendments to the above data.

2. Supplier shall be required to submit to us a supplier's declaration as specified in EC Regulation 1207/2001 on the origin of the goods supplied, including any new products added during the validity of the supplier's declaration. Supplier shall be liable for any damage or loss resulting from culpable, invalid or delayed issue of the supplier's declaration. Where necessary, Supplier shall contact its customs authority to obtain an information certificate verifying the accuracy and authenticity of the declaration and forward the certificate to us.

Where the legal requirements for issue of a supplier's declaration do not apply, Supplier shall give notice to us with statement of grounds.

#### **XIV. FINAL PROVISIONS**

1. The validity, operation and performance of all orders and contracts shall be governed by and interpreted exclusively in accordance with the law of Germany excluding the conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. Unless otherwise specified in the order, the place of performance shall be Ahlen/Westphalia, Germany.
3. The place of jurisdiction for any and all disputes between us and Supplier shall be Ahlen/Westphalia, Germany, or Supplier's place of business, at our discretion. The exclusive place of jurisdiction for any and all claims and actions against us shall be Ahlen/Westphalia, Germany.
4. To the extent permitted by the Federal Data Protection Act (Sections 28, 29 BDSG), all Supplier data shall be stored and processed electronically on computer.
5. Should any individual provision or any part of any provision of these Terms and Conditions of Purchase or of the supply contract be or become illegal, void or unenforceable, the validity of the remaining provisions thereof shall in no way be affected.

#### **SUPPLEMENTARY TERMS AND CONDITIONS FOR THE PURCHASE OF EQUIPMENT AND SYSTEMS**

1. The design, manufacture, construction and supply of the equipment/system ordered shall be based on the pertinent European guidelines and directives, particularly the health and safety requirements of the EC Machinery Directive including Annexes I to VI.
2. Manufacturer shall be responsible for drawing up a declaration of conformity.
3. The equipment/system shall comply with all pertinent technical standards, including ISO, IEC, EN, DIN EN and the DIN VDE.
4. The equipment/system shall have the relevant EC type-examination certificate under Art. 8 of the Machinery Directive and Annex IV of the Machinery Directive.
5. The equipment/system and the technical working equipment shall meet the requirements of the Equipment Safety Act (GSG, as amended), and moreover, shall comply with the statutory instruments imposed under Section 24 of the German Trade Regulation Act (GewO).
6. In addition to this, the safety standards of recognised codes of practice and the health and safety regulations shall be binding for non-harmonised areas (EC law/German law).
7. All equipment and systems supplied shall bear the CE and/or GS mark.

**D-59229 Ahlen, 01.06.2016  
Franz Kaldewei GmbH & Co. KG**