

# **General Terms and Conditions of Sale and Supply of the KNAUF INTERFER GROUP (status: August 1, 2004)**

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## **1. Scope**

- 1.1 These General Terms and Conditions of Sale and Supply apply to all contracts – including future ones – which are made with entrepreneurs, legal bodies under public law and special funds under public law and relate to supplies and other services, including work contracts, in particular supply of processed concrete steel and its use (laying) on construction sites. No terms of purchase of the purchaser will be recognised, even if we fail to expressly protest them again after receiving them.
- 1.2 Our offers are non-binding. Any oral agreements, promises, undertakings and guarantees made by our employees in connection with conclusion of the contract are not binding until we have confirmed them in writing.
- 1.3 In the event of doubt, the criteria for interpretation of commercial clauses are the latest version of the Incoterms.
- 1.4 For the purpose of these Terms and Conditions, the "purchaser" is also the "customer" in work contracts.

## **2. Prices**

- 2.1 If nothing has been agreed to the contrary, the prices and terms in our price list applicable when the contract is made shall apply. The basis for calculation of prices are the weights ascertained including packaging, to the extent customary in the industry.

- 2.2 If fiscal/public charges or other external costs included in the agreed price are altered or newly created more than four weeks after conclusion of the contract, we have the right to adjust the price correspondingly.
- 2.3 For outsourced contracts, the price will be calculated on the basis of the quantity supplied to us.
- 2.4 By paying cost shares for tools, the purchaser does not acquire any right to the tools themselves, which remain our property notwithstanding any claims of the purchaser. Bills for tool costs are to be paid immediately in cash without any deductions, provided no other ruling has been agreed in writing.

### **3. Payment and Offsetting**

- 3.1 If nothing has been agreed to the contrary or is stated in our bills, payment must be made – without any deductions, particularly discounts – in time for us to have the appropriate amount at our disposal on the day on which payment is due. The purchaser shall pay the costs of payment transactions. The purchaser only holds a right of retention or offsetting if his counterclaims are undisputed or have been confirmed by a court of law in a final form.
- 3.2 The purchaser is deemed in default no later than 10 days after payment is due and after receipt of bill/payment listing or delivery of performance.
- 3.3 If, after conclusion of the contract, it becomes clear that our payment claim is jeopardised due to lack of solvency on the part of the purchaser, we shall hold the rights under Section 321 of the German Civil Code (defence of insecurity). In such a case, we also have the right to call in all claims under the current business relationship with the purchaser, provided they do not fall under the statute of limitations. In addition, the defence of insecurity covers all further outstanding supplies and services in the business relationship with the purchaser.
- 3.4 Any agreed discount always relates to the invoice value only, excluding freight, and is subject to full settlement of all due liabilities of the purchaser at the time of discounting.

### **4. Performance of Deliveries, Supply Periods and Dates**

- 4.1 Our supply obligation is subject to correct and on-time delivery to us, unless we are responsible for such incorrect or delayed delivery.
- 4.2 Information provided on supply dates and periods is approximate. Supply periods begin on the date of our order confirmation and are subject to on-time clarification of all details of the order and on-time fulfilment of all the purchaser's obligations, such as provision of all public-authority certificates, opening of letters of credit, furnishing of guarantees or making of advance payments.
- 4.3 The criterion for the meeting of supply periods and dates is the time of dispatch ex works or warehouse. Such periods and dates are considered

met when notification of readiness for shipment is given if the goods cannot be dispatched in due time through no fault of ours.

- 4.4 If delivery/collection is delayed for reasons for which the purchaser is responsible, the latter shall pay the costs of storage and shall bear the risk of accidental loss.
- 4.5 If material supplied by the purchaser is processed, the quantity returned to the purchaser will be reduced by the amount removed as waste or rejected for technical or qualitative reasons, e.g. defective edges, ends or sections.
- 4.6 Events of force majeure entitle us to postpone deliveries for the duration of the hindrance and for a reasonable subsequent start-up period. This also applies if such events occur during default. The following are deemed to be the equivalent of force majeure: currency and trade policy measures and other sovereign acts, strikes, lock-outs, operational disturbances for which we are not responsible (e.g. fire, machine and roll breakdown, lack of raw materials or energy), blockage of traffic routes, delay in import/customs clearances and all other circumstances for which we are not responsible and which make supplies and services significantly more difficult or impossible. If performance of the contract can no longer be reasonably expected of one of the contracting parties due to the above events, said party can declare the contract to be annulled.

## **5. Unloading**

The purchaser must unload immediately, taking due care. Any assistance we may give is without any legal obligation and liability for ordinary negligence is ruled out.

## **6. Reservation of Title**

- 6.1 All supplied goods remain our property (goods subject to reservation of title) until all claims which we hold under the business relationship have been settled, especially the ongoing claims to payment (current account reservation). This also applies to claims arising in the future and conditional claims, e.g. acceptor's bills. Similarly it applies when payments are made in settlement of specially identified claims. This current account reservation will finally expire on settlement of all claims that are still outstanding at the time of payment and covered by said current account reservation.
- 6.2 Processing of the goods subject to reservation of title is performed for us as the manufacturers as defined in Section 950 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), without placing us under any obligation. The processed goods will be deemed goods subject to reservation of title as defined under no. 1. If the goods subject to reservation of title are processed, combined and mixed with other goods by the purchaser, we hold a co-title to the new item in the ratio of the invoice value of the goods subject to reservation of title to the invoice value of the other goods used. If our title becomes null and void through combination or mixing, the purchaser hereby assigns to us now the property rights he holds to the new stock or new item, this being to the amount of the

invoice value of the goods subject to reservation of title. He will keep said goods for us free of charge. Our co-title rights are deemed goods subject to reservation of title as defined in no. 1.

- 6.3 The purchaser may only sell the goods subject to reservation of title in the course of customary business operations and on his normal business terms, provided he is not in default and subject to the proviso that the claims resulting from resale under nos. 4 to 6 pass to us. He is not entitled to dispose of the goods subject to reservation of title in any other way.
- 6.4 The claims arising from resale of the goods subject to reservation of title or arising for some other legal reason are hereby assigned to us now, together with all the security which the purchaser obtains for the claim. They serve us for security to the same extent as the goods subject to reservation of title. If the purchaser sells the goods subject to reservation of title together with other goods not sold by us, the claim resulting from resale is assigned to us in the ratio of the invoice value of the goods subject to reservation of title to the other goods sold. On sale of the goods in which we hold co-title shares under no. 2, the part corresponding to our co-title share is assigned to us.
- 6.5 The purchaser has the right to collect claims resulting from resale. This power of collection shall cease to be valid if we revoke it but no later than in the event of default on payment, failure to honour a bill of exchange or application for instigation of insolvency proceedings. We will only exercise our right of revocation if it becomes clear after the contract has been concluded that our payment claim under this contract or other contracts with the purchaser is at risk due to the latter's lack of solvency. At our written request, the purchaser must notify his customers immediately of the assignment to us and must provide us with the documents required for collection.
- No claims resulting from resale are permitted to be assigned, unless such assignment is carried out by old-line factoring of which we are notified and in which the factoring revenue exceeds the value of our secured claim. Our claim becomes payable as soon as the factoring revenue is credited.
- 6.6 The purchaser shall notify us immediately of any attachment or other interference by third parties. The purchaser will pay all the costs incurred for cancellation of such distraint or for return transportation of the goods subject to reservation of title, if not reimbursed by third parties.
- 6.7 If the purchaser is in default on payment or fails to honour a bill of exchange when due, we have the right to repossess the goods subject to reservation of title and to enter the purchaser's premises for this purpose if necessary. The same applies if it becomes clear after the contract has been concluded that our payment claim under this contract or other contracts with the purchaser is at risk due to the latter's lack of solvency. Repossession does not constitute rescission of the contract.
- 6.8 If the realisable value of existing securities exceeds the secured claims including subsidiary claims (interest, costs or similar) by more than 50 per cent altogether, we have an obligation to release the securities of our choice to the appropriate extent at the purchaser's request.

## **7. Qualities, Dimensions and Weights**

- 7.1 Qualities and dimensions are determined by the DIN-EN standards or material sheets applicable when the contract is concluded. If there are no DIN-EN standards or material sheets, the appropriate Euro standards shall apply; if there are no such standards, qualities and dimensions shall be as customary in the industry. References to standards, works standards, material sheets or test certificates or any particulars given of qualities, dimensions, weights and suitability do not represent undertakings or warranties. The same applies to declarations of conformity, manufacturers' declarations and appropriate marks, like CE and GS.
- 7.2 Weighing by us or our sub-suppliers constitutes the criterion for weights. Weight will be shown by presentation of the weighing ticket. To the extent legally permissible, weights can be determined on a standard basis without weighing. This does not prejudice the additions and reductions (commercial weights) customary in the steel industry in the Federal Republic of Germany. For goods charged by weight, the number of items, bundles, etc., listed in the advice of dispatch are not binding. If individual weighing is not customary, the complete weight of the shipment will apply. Any differences between the complete weight and calculated individual weights will be allocated to such individual weights proportionately.

## **8. Acceptance**

- 8.1 If an acceptance process has been agreed, it can only be performed in the supplying works or, respectively, our warehouse immediately after notification of readiness for acceptance. The purchaser shall pay his personal acceptance costs, and material acceptance costs will be charged to him in line with our price list or that of the supplying works.
- 8.2 If, for reasons for which we are not responsible, the acceptance process is not performed or is not performed in due time or is not performed in full, we have the right to ship the goods without acceptance or to store them at the expense and risk of the purchaser and to charge him accordingly.

## **9. Shipment, Passage of Risk, Packaging, Partial Supply**

- 9.1 We will specify the shipment route and mode as well as the forwarding agent and carrier.
- 9.2 If, for reasons for which we are not responsible, shipment by the scheduled route or to the scheduled destination becomes impossible in the scheduled period or is rendered significantly more difficult, we are entitled to supply the goods by a different route and to a different destination. The additional costs thus incurred will be payable by the purchaser, who will be given an opportunity to comment prior to such action.
- 9.3 The risk, including that of confiscation of the goods, shall pass to the purchaser on surrender of the goods to a forwarding agent or carrier but no later than when the goods leave the warehouse or supplying works.

This applies to all transactions and includes goods for which charges have been prepaid and shipments free to the address of the purchaser. If the purchaser collects the goods himself, the risk passes to him as soon as the goods are placed at his disposal. In the event of delays in supply for which we are not responsible, all risks pass to the purchaser on the day of receipt of notification of readiness for shipment. If goods are repossessed for reasons for which we are not responsible, the purchaser shall bear all risks until we receive the goods. We will only arrange insurance at the instruction and expense of the purchaser. The duty and costs of unloading are the responsibility of the purchaser.

- 9.4 Goods will be supplied without packaging and without protection against corrosion. If customary in the industry, we will supply packaged goods. At the purchaser's expense, we will provide such packaging, protection and transportation aids as we have found to be efficient. They can be returned to our warehouse. We will not pay any costs incurred by the purchaser for return transportation or for his own disposal of packaging.
- 9.5 We have the right to make partial deliveries within reasonable limits.
- 9.6 Excess and short deliveries of the contractual quantity as customary in the trade are permissible. Larger deviations, particularly in warehouse business, are hereby deemed agreed if they serve for proper material supply, e.g. for shipment of complete packages of sheet.
- 9.7 Flat products are always weighed and charged gross for net if nothing has been agreed to the contrary.

## **10. Call orders**

- 10.1 Goods of which notification of readiness for shipment has been given as per contract must be called without delay; if this is not done, we have the right, after sending a reminder, to ship them at our discretion at the cost and risk of the purchaser or to store them as we see fit and bill them immediately.
- 10.2 For contracts providing for consecutive delivery, we are to be given calls and sorting instructions for approximately equal monthly quantities; if this is not done, we have the right to decide as we see fit.
- 10.3 If the total of the separate calls exceeds the contractual quantity, we have the right but no obligation to supply the additional quantity. We can charge the additional quantity at the prices valid at the time of call or, respectively, supply.

## **11. Notice of Defects and Warranty**

- 11.1 Notice of any material defects to the goods must be given in writing immediately, no later than seven days after delivery. If there are material defects which could not possibly be discovered within this period even by most careful inspection, written notice of these defects must be given instantly after their discovery and no later than before expiry of the agreed or statutory period of limitation. Simultaneously, all and any use and processing must be discontinued immediately.

- 11.2 After the purchaser has completed an agreed acceptance process for the goods, he cannot give notice of defects which could have been discovered during the agreed type of acceptance process.
- 11.3 If the event of a justified and on-time notice of defects, we can, at our discretion, remedy the material defect or supply a non-defective item (subsequent performance). If subsequent performance is unsuccessful or is refused, the purchaser has the right to reduce the purchase price or to rescind the contract after a reasonable period of grace has been set and expired without result. If the material defect is no more than minor, the purchaser may reduce the price only. The purchaser cannot require rescission of the contract if construction work is the subject of the warranty or the defect only reduces to an insignificant extent the value or suitability of an item of work we have performed.
- 11.4 All rights relating to a material defect shall expire if the purchaser fails to give us an immediate opportunity to view the material defect ourselves, in particular if, upon request, he fails to make the relevant goods or samples of the same available immediately.
- 11.5 If goods have been sold as downgraded material, the purchaser holds no rights based on material defects if they result from the stated reasons for downgrading or from reasons which he would normally have to anticipate. Our liability for material defects is ruled out in relation to the sale of so-called IIa material.
- 11.6 Models, samples, analysis data and other data on the quality or dimensions of the goods constitute non-binding general information if not expressly warranted.
- 11.7 For orders for processing of materials supplied to us, we assume no liability for the quality of the supplied material or its processability. Obligatory liability under the Product Liability Act is not prejudiced hereby.
- 11.8 We will only pay expenses associated with subsequent performance if they are reasonable in each case, this being in particular in relation to the purchase price of the goods. We will not pay expenses incurred by removal of the goods sold to a location other than the seat of business of the purchaser, unless this corresponds to their contractual use.
- 11.9 The purchaser's rights of recourse under Section 478 of the German Civil Code are not prejudiced.
- 11.10 Any advisory services provided by us, our employees or persons acting for us and any data associated therewith do not create either a legal contractual relationship or a subsidiary obligation under the contract, so we are not liable for such advisory services unless any agreements to the contrary have been expressly made in writing.

## **12. General Limitation of Liability**

- 12.1 We shall only be liable – including for our executive staff and other vicarious agents – for breaches of contractual and non-contractual duties,

in particular for impossibility of performance, default, culpa in contrahendo and unlawful acts, in the event of intent and gross negligence, this then being limited to the loss typical of the contract and foreseeable when the contract was made.

- 12.2 These limitations do not apply to a culpable breach of major contractual obligations inasmuch as achievement of the contractual purpose is jeopardised thereby or to cases of obligatory liability under the Product Liability Act or to loss of life, injury to body and health or if and to the extent that we have maliciously concealed material defects or have guaranteed that they do not exist.
- 12.3 The statutory ruling on the burden of proof is not prejudiced hereby.
- 12.4 If nothing is agreed to the contrary, contractual claims held by the purchaser against us for reason of or in association with supply of the goods shall be subject to a time limitation of one year after delivery of the goods. This limitation period also applies to goods which are utilised for a building in their customary manner of use and have caused the defectiveness of such a building. This does not affect our liability resulting from intentional and grossly negligent violation of duties or the limitation period for statutory recourse claims. In the event of subsequent performance, the period of limitation does not start anew.

### **13. Place of Fulfilment, Legal Venue and Governing Law**

- 13.1 For supply ex works, the place of fulfilment for our supplies is the supplying works; for other supplies, it shall be our warehouse. The legal venue is, at our discretion, the seat of the headquarters of the company of the KNAUF INTERFER GROUP identified on the reverse or the seat of business of the purchaser.
- 13.2 In supplementation of these terms and conditions, German non-harmonised law, in particular the German Civil Code/Commercial Code (*Handelsgesetzbuch, HGB*), shall apply to all legal relations between the purchaser and ourselves. The terms of the convention of 11<sup>th</sup> April 1980 on contracts on the international sale of goods will not apply.