

GENERAL PURCHASE CONDITIONS
of MIK INTERNATIONAL GmbH & Co. KG
Pröbstinger Weg 3, D- 59457 Werl-Sönnern
(Last amended: January 2018)

1. General – Applicability

- The only conditions that are definitive in relation to any orders we place or contracts we enter into are the following purchase conditions. By submitting a quotation, confirming a job, accepting or executing an order, any supplier to whom we have made these general purchase conditions known in connection with a call for tenders, an enquiry, an order or at the outset of an ongoing business relationship agrees to abide by them. The suppliers' general terms and conditions and any conditions that vary from our order or from these general purchase conditions shall apply only if and insofar as we have explicitly accepted them in writing. This shall apply in every instance, including if the supplier has made reference to its general terms and conditions in the quotation or order confirmation. In order to be valid any and all changes must be confirmed by us in writing. Any terms and conditions running contrary to these are herewith explicitly rejected. They shall also not be deemed accepted should we after receiving them at our premises not explicitly state again that we reject them. Upon accepting and at the latest upon executing the order, the supplier acknowledges the sole applicability of our purchase conditions, even if making reference to its own. Accepting deliveries or services or making payment for the same shall not mean any agreement to the suppliers' terms and conditions.
 - All other agreements made between ourselves and the supplier for the purpose of executing any contract are to be recorded in writing.
 - Our purchase conditions shall apply also to all future orders with the supplier.
 - The supplier consents to its data being processed as necessary for the business relationship.
- The foregoing applies as notification pursuant to Art. 33.1 Federal Data Protection Act (BDSG).

2. Quotations, quotation documents and orders

- All quotations submitted by the supplier shall for us be non-binding and free of any cost.
- All agreements made between us and the contract partners for the purpose of executing the contract shall be recorded in a written contract.
- Orders are to be promptly confirmed in writing by the supplier through signed confirmation. We reserve the right to cancel the order if the confirmation is not received within 14 days.
- In relation to quantity, characteristics and workmanship, the supplier must adhere to the enquiry or call for tenders and in the event of any deviation explicitly draw attention to this in writing. Otherwise the supplier shall forfeit any right to claim additional payment.
- The supplier shall honour the quotation for three months. If any differences in relation to quantity, dimensions or weight of the delivered goods emerge, the figures determined by our goods-in checking process shall be definitive. We reserve the right to accept deliveries of more or less than the quantity ordered.

3. Prices – Payment terms – Invoicing

- The price shown in the order is binding and includes all ancillary costs. In the absence of any written agreement to the contrary, the price includes free delivery, i.e. to MIK INTERNATIONAL GmbH & Co. KG or any explicitly agreed other place of use, inclusive of packaging, insurance, etc. If anything different is agreed, then the carriage and packaging costs are to be paid on our behalf by the supplier and shown separately on the invoices. No changes due to retrospective increases in any costs, taxes or anything else shall be accepted.
- If at the time of order placement the price has not been finalised, it must be given at the very latest with the order confirmation. If we raise no objection within 10 working days, we shall be deemed to have accepted this price. If a price is agreed ex works or ex warehouse, the purchaser shall assume costs for carriage only at the cheapest possible rate.
- Prices are exclusive of statutory sales tax. Sales tax is to be shown separately on the supplier's invoices.
- We can only process invoices if, as per the provisions in our order, they include the order number shown there. The supplier shall be responsible for all consequences arising from any failure to observe this obligation. Adhering to the statutory requirements, in particular to those pursuant to Art. 14 ff. of the Sales Tax Act, in relation to invoice content, the invoice is to be submitted separately immediately after delivery has been made. Monthly invoices are likewise to be sent over by not later than the 5th day of the month following the delivery. Any periods for early payment discount start to run from the point that we receive an invoice compliant with the statutory requirements.
- Unless otherwise agreed in writing, for invoices received in the period from the 1st to the 15th of any month we pay by the end of that month the purchase price less 3% early payment discount or the net purchase price by end of the following month, and for invoices received in the period from the 16th to the end of any month we pay by the 15th of the following month the purchase price less 3% early payment discount or the net purchase price by the 15th of the month after that.
- We shall be entitled within the scope in the law to rights of offset and retention.
- The supplier may assign its claim to a third party or have its debt collected by such only with our written consent. Partial assignment by the supplier is not permitted.

4. Delivery time – Execution

- Every order is to be confirmed immediately, stating the binding delivery time. The agreed delivery time is binding. The delivery time begins from the date of receipt of the order at the supplier's premises. After expiry of the delivery time the supplier shall be in default, without there being any need for a reminder.
The definitive factor in adhering to the delivery dates or deadlines is receipt of the goods at the unloading / goods-in location specified by us.
- It is imperative that the supplier keeps to the agreed delivery time. Any caveat that this is subject to the supplier itself being supplied on time shall not be permitted.
- In the event of delivery being overdue, we shall be entitled to levy a charge of 1% of the delivery value per week or part thereof, though not more than 5% in total, as lump-sum compensation for late delivery. The supplier shall have the right to prove to us that no loss at all or a much smaller loss arose as a result of the delay.
- In the event of the supplier defaulting we may, after expiry of a reasonable further deadline set by us without delivery being made, have said delivery made by a third party. The additional costs shall be charged to the supplier.
- If the supplier is not able, including as a consequence of force majeure, to keep to a delivery date, it must notify us of this immediately it gains knowledge of the reason for the impediment. In such event we shall be entitled either to extend the acceptance deadline or, if our interest in the delivery is becoming significantly less, wholly or partially cancel the contract and, where applicable, claim compensation. The supplier shall not be able to derive any claims of any kind from this. In particular, the supplier shall not be entitled in the event of force majeure or similar to cancel the contract or make any increases in price at its own discretion.
- If we request any initial samples, the supplier may not begin with series production until the sample has been approved in writing and the go-ahead for production has been given.
- We shall be able to retrospectively demand changes in the characteristics of the delivery or service that are within the supplier's technical capabilities. Technical modifications and their impact on prices, delivery time or other conditions require the written form as per clause 2 of these general purchase conditions.
- In the event of our business facing any urgent operational issues, e.g. as a consequence of force majeure, fire, flooding, withdrawal of a product, etc., we shall be entitled, in return for an indemnity payment of 5% of the agreed price of the not yet delivered goods from the order concerned, to cancel the contract with no further costs.

5. Dispatch – Transfer of Risk – Documents

- Unless otherwise agreed in writing, delivery is to be made free of charge to the delivery address / place of use specified by us on the order.
- Risk does not transfer to us before the goods have been received. The supplier shall be liable for all damage, delay charges, etc.
- The supplier must put a delivery note in with every consignment and precisely state on all dispatch papers, delivery notes and invoices our order number, the supplier number, quantity and quantity unit, gross, net and, where applicable, calculated weight, product name including our product number, and for partial deliveries the residual quantities. If the supplier fails to do this, it must answer for any delays caused as a result.
- Partial deliveries are permissible only on the basis of written agreements. In the absence of any such agreements, we shall have the right to refuse to accept the delivery. In any event, partial deliveries are not to be regarded as stand-alone transactions and are to be marked in writing.
- Insurance for the transportation shall be taken care of by the supplier.

6. Quality, defect liability, product liability

1. The supplier guarantees that, in particular in respect of choice of material, workmanship and mode of operation, all services provided – insofar as they are applicable to the specific item being delivered – conform to the latest technological standards, the relevant legal provisions and the directives and guidelines of all relevant authorities and professional organisations. If in any individual cases deviations from the regulations are necessary, the supplier must obtain our written consent to this. The supplier's liability for deficiencies shall not be limited by such consent. If the supplier has any reservations about the way in which we wish to have the service provided, we are to be notified of this in writing without delay.
 2. We shall notify the supplier of any evident deficiencies with the delivery as soon as such deficiencies can be ascertained during the normal course of business. We shall be under no obligation to perform a goods-in check. Any goods-in check that we may perform shall not relieve the supplier of its obligations.
- In all cases where a defect quota has been agreed with the supplier and this is exceeded, we shall be entitled to return the entire consignment at the supplier's expense and risk. If there is no separate agreement on a defect quota, we shall be entitled to return a consignment if its defect quota exceeds 1% of that consignment's quantity.
3. We shall continue to be entitled to our full statutory rights to make claims for any defects or deficiencies. We shall be entitled to demand that the supplier make good any defects either in the form of remedial action or a replacement delivery, as we wish. The supplier has to bear any expenditure necessary for doing this, in particular costs for transportation, any road repairs, labour and materials.
 4. If after our notification of the defect the supplier is evidently not willing or able to rectify it as quickly as is necessary to avoid any disproportionately greater damage or losses, we shall have the right to rectify the defect ourselves or have this done by a third party and to demand reimbursement of the necessary costs and expenditure. The same shall apply if after expiry of a reasonable deadline set by us in writing the supplier has not remedied the defect.
 5. We shall explicitly retain the right to compensation as per the statutory provisions and the supplier must in particular reimburse us for any and all losses, including consequential losses, that arise due to the existence of a defect. We shall be entitled to rectify the defect ourselves at the supplier's cost if it would be dangerous to delay doing so.
 6. For the event that a customer or any other third party makes a claim against us due to any product damage (no matter on what legal grounds), the supplier undertakes that if asked to do so it will immediately indemnify us from such claims to such extent as it is responsible for said deficiency.
 7. The supplier is responsible for the goods, samples and brands that it delivers being unencumbered by any third-party rights and for them not violating any third-party intellectual rights, especially patents or copyright. The supplier is further responsible for the goods that it delivers complying with all statutory provisions and official regulations. In the event of any violation caused by the supplier of private rights or public legal regulations, it shall indemnify us of any and all compensation claims made by third parties.
 8. If the supplier has given a warranty that the goods/works are of a specified quality, it shall be liable for damages in accordance with legal provisions, including for damages in lieu of performance. The statute of limitation shall be three years calculated from the date of transfer of risk.

7. Product/ regress

1. If any third party makes a claim against us arising from product liability or pursuant to statutory provisions, the supplier shall be bound to indemnify us as soon as requested so to do of all such claims to such extent as the cause lay within its area of control and organisation and it is directly liable to the third party in external dealings. If as a consequence of such an incident we have to recall a product, the supplier shall be required to bear our expenses and costs arising from this. This shall apply in particular also to any recalls pursuant to product safety legislation. If possible and reasonable for us to do, we shall inform the supplier of the substance and scope of any such recall well in advance and give it the opportunity to comment.
2. Throughout the term of the contract the supplier must have product liability insurance in place with minimum cover of 5,000,000 EUR per claim. We shall be entitled to demand of the supplier that its insurer confirms such cover.
3. In consultation with the supplier we shall undertake in accordance with provisions of product safety legislation the necessary notification of the authority responsible in each instance.

8. Retention of title – Provision of parts etc.

1. Following handover and acceptance, we shall gain immediate unqualified title to the goods delivered by the supplier. The same shall apply to the documents delivered by the supplier with said goods. By handing over the goods the supplier declares that it is fully authorised to dispose of them and that no rights of any third party exist.
2. If we provide any parts to the supplier, we retain title to them. Any processing or transformation done by the supplier is done on our behalf. If the item to which we retain title is combined with other goods not belonging to us, we shall acquire joint title to the new object in proportion to the value of our item relative to the other items processed at the time of said processing.
3. If the item provided by us is inseparably mixed with other goods not belonging to us, we shall acquire joint title to the new object in proportion to the value of the retained title item relative to the other items mixed with it at the time of said mixing. If the mixing is done in such a way that the supplier's item is to be regarded as the main item, it is deemed agreed that the supplier shall transfer joint title to us on a pro rata basis; the supplier shall safeguard the sole or the joint title on our behalf.
4. We retain title to any tools; the supplier shall be required to use the tools solely for producing the goods that we have ordered. The supplier must at its own expense insure the tools belonging to us at their value as new against fire, water damage and theft. The supplier must carry out any necessary servicing or inspection jobs at the correct time at its own expense. The supplier must notify us immediately of any malfunctions and should it culpably fail to do so, our rights to claim compensation shall remain unaffected.

9. Confidentiality and data protection

1. The supplier herewith gives an undertaking to us to keep all information, records, drawings, sketches, specification documents, data, etc. obtained in the course of the contractual relationship confidential, not to make any of this accessible to third parties and in particular not to use it for its own promotional purposes unless we explicitly give our consent to this in writing.
2. We retain intellectual title (copyright) to all drawings, specifications, documents, models, etc. that we have let the supplier have. Copies may be made only to such extent as is essential for the manufacture of the goods we have ordered. The supplier undertakes to give back the documents it has received if and whenever we so request and to destroy any copies that have been made. The supplier has no right of retention.
3. The supplier has taken note of the fact that in the event of any violations of the duty of confidentiality we shall be entitled to demand compensation and that we reserve the right to prosecute.

10. Place of performance, jurisdiction, applicable law, severability

1. Unless otherwise indicated in our order confirmation, our company's registered office shall be the place of performance for all rights and obligations arising from this legal relationship and also for our payments.
2. Jurisdiction for all disputes arising from this legal relationship shall lie with the courts responsible for our registered office location. We shall also be free to choose any other permissible general or special jurisdictions.
3. The applicable law shall be exclusively the law of the Federal Republic of Germany. The Hague Convention of 1 July 1964 relating to a Uniform Law for the International Sale of Goods and the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not apply.
4. The binding wording in the event of any disputes shall exclusively be the German wording of these General Purchase Conditions.
5. These contract conditions shall remain valid even if any individual clauses prove to be invalid. The invalid clause of the general contractual conditions is then to be added to or reformulated in such a way that the business purpose intended with the invalid provision is as far as possible achieved. The corresponding procedure is to be followed if in the course of the contractual relationship any omission emerges that requires an addendum. If the invalidity relates to a provision about time or the performance of the service, then the legally permissible measure shall take its place.
6. Should any provision of these purchase conditions or of the contract be unenforceable with regard to mandatory foreign legislation, the supplier shall if we so request agree such contract addenda with us and make such declarations to third parties and authorities as ensure the validity of the provision concerned and, if this is not possible, ensure its business intent under foreign legislation as well.