



General Terms and Conditions 04/2013

1. General

- (1) If not agreed upon otherwise in writing, the following General Terms and Conditions shall be the basis of the business relationship between Supplier and Purchaser.
- (2) The General Terms and Conditions shall also apply to all further orders made by the Purchaser, even when the Supplier does not refer to it in every single case.
- (3) Upon ordering our General Terms and Conditions shall be acknowledged.
- (4) General Terms and Conditions of the Purchaser shall only apply after written confirmation from our side. In case individual clauses are effective, the remaining ones shall remain valid.
- (5) The Supplier's General Terms and Conditions shall only apply when doing business with companies as specified by §§ 14, 310 par. 1 BGB (German Civil Code), corporate bodies of public law or special assets governed by public law.
- (6) Regarding the reform of the law of obligation in effect since November 1, 2002, it cannot be excluded that changes of the Supplier's General Terms and Conditions may become necessary at short notice, in this respect for individual orders made by the Purchaser the respective current version of the Supplier's General Terms and Conditions shall apply, available at www.kaufmann-um.de. Upon the Purchaser's request the Supplier shall be willing to enclose the respective current version of his General Terms and Conditions with individual orders.

2. Offers and Quotes

- (1) The offers made by the Supplier including delivery dates shall be non-binding.
- (2) If not agreed upon otherwise, prices shall be exworks/Incoterms.
- (3) The Supplier shall reserve the right of ownership and the copyright on offers, drawings, sketches etc. Offers and sketches etc. must not be made available to third parties, especially competitors, and shall not be used for bidding purposes. If the offer is not accepted they shall be handed back immediately.
- (4) For samples, drawings, sketches and other project services, which have been explicitly ordered by the Purchaser, the payment agreed upon shall be paid, even when the order is not made. After payment ownership shall be transferred to the Purchaser.
- (5) In case the Purchaser wants a binding price, a written quote shall be required. In this, the Purchaser shall list the services and materials required for the project along with the respective prices. The Supplier shall be bound to this quote until 4 weeks after handing it in.
- (6) Due to special agreements quotes shall be paid for. If an order is made based on a quote, any costs for the quote and preparations shall be charged against the final order invoice.
- (7) With goods which are offered including installation, not included in the price are: installation on the low voltage side, the provision of the scaffolding or any lifting devices, any type of services such as masonry, plastering or setting work.
- (8) The information in our quotes regarding prices, measures, weights, lighting strength, power consumption, delivery dates etc. shall only be rough. Any orders, order changes and amendments as well as oral agreements and confirmations of any kind, even those made by people who act on our behalf, information on execution, measures etc. shall only be binding to us after written confirmation.
- (9) All documents added to our quote shall only be rough information, as long as not stated otherwise. Documents shall remain our property and shall not be used for purposes other than specified in the quote.
- (10) All measurements in our quote and order documents shall be verified on location.

3. Orders, Delivery Times and Order Confirmation

- (1) Delivery periods shall start only after complete clarification of all execution regulations. Fulfilling contractual obligations from the Purchaser's side shall be a precondition for observing any delivery periods agreed upon.
- (2) An order shall become binding through the Supplier's order confirmation. The Supplier shall be informed immediately of any complaints.
- (3) For the extent of the delivery our written order confirmation shall be referred to.
- (4) The stated delivery period shall begin with the day the order is completely clear in terms of technical and design-related respects. This shall also comprise services of advance payments agreed upon and granting of permissions from high authorities or third parties.
- (5) In case the Purchaser cancels the order completely or parts of it, he shall pay for any costs arisen from the order and lost profit.
- (6) Acts of God shall entitle the Supplier – also within a period of delay – to postpone the delivery for the duration of the impediment along with an appropriate number of days, or to cancel the agreement wholly or in parts due to the part of the contract not fulfilled yet. The Supplier shall inform the Purchaser immediately about the occurrence of an Act of God. All unforeseeable events shall be treated equally to Acts of God that make delivery to the Supplier difficult or impossible, such as measures regarding currencies or trade or those carried out by authorities, strike, lockouts, operating interruptions (e.g. fire, lack of raw material or energy) as well as impeding traffic routes, no matter whether these events occur with the Supplier, his pre-suppliers or an sub-supplier. The Supplier shall take care of a careful selection of his pre- and sub-suppliers.
- (7) Changes of execution that turn out to be technically required and which are reasonable to the Purchaser under consideration of the Supplier's interest, shall be reserved.
- (8) In case of installation calculation of the required material and the services agreed upon in the contract shall be made based on the ascertainties listed in the final inspection protocol. Since the actual requirement of parts and/or material cannot be fully ascertained beforehand, listing of costs of any second transport shall be reserved.
- (9) The validity of the contract shall not depend on any approval through authorities of third parties. The Purchaser shall be obliged to take care of that. If an approval is taken care of by the Supplier, he shall act as a representative of the Supplier without approval fees shall be paid by the Purchaser. In case approval is not granted, the Supplier may charge any occurred costs plus 10% of the order volume. The Purchaser shall still be allowed to prove that no damage has occurred to the Supplier or is significantly lower.
- (10) If static calculations turn out to be required due to the extent or size of an advertising structure, this shall be compiled by us and charged separately. The same shall apply to any proof of stability required for authorities. Building-related static proof shall be taken care of by the Purchaser.
- (11) Required changes also due to local regulations shall be considered order expansions.

4. Installation

- (1) If installation work is done by us we act on the assumption that they can be carried out without any impediments or delays.
- (2) Installation is attaching ordered components within the scope of a continuous installation activity within the scope of the purchase contract.
- (3) Even though installation costs are listed as fixed prices, they do not contain costs arising from events the Purchaser is responsible for that cause delays or call for extra work and expenses. Any extra work and expenses caused by this shall be borne by the Purchaser.
- (4) The installation price agreed upon shall be made on the assumption that the work is not impeded. Any additional expenses and/or extra services we are forced to carry out due to impediments or other circumstances, which e.g. were not foreseeable at the time of when the measure was agreed upon and/or if we are not responsible for these, shall be charged extra upon proof. Such impediments or circumstances are e.g. narrow space, unstable constructions (e.g. under facings that were not visible at the time of when the measure was agreed upon) or blocked access paths and/or damaged access and transport routes, already existing scaffolding etc. Any consumables required for the installation shall be charged extra.
- (5) Any required third-party services can be ordered by the Supplier for account of the Purchaser.
- (6) Start and execution of the installation calls for suitable weather conditions. If – due to bad weather conditions – extra costs occur we shall charge the Purchaser upon proof.
- (7) In time before installation starts electrical supply lines need to be laid up to the designated location of the advertising construction. Electric supply lines of neon high-voltage lines shall also be laid separately from each other and secured up to the transformer. All electric connections need to comply with applicable European Standards/regulations made by the German Commission for Electrical, Electronic and Information Technology.
- (8) Advertising elements supplied by us do not have any constructional functions. These need to be taken care of by the Purchaser. All required connections and sealings to the construction shall be carried out and installed by an authorised expert. Roof sealings shall be carried out by the Purchaser before installation.
- (9) Our technicians are obliged to refuse work due to unsafe conditions, especially due to work carried out by the Purchaser in an unsatisfactory manner, even when the Employer or his representative insists. Any extra costs of a second journey or setting up of the construction site shall be borne by the Purchaser.

5. Delivery and Final Inspection

- (1) Dispatch or transport shall be carried out at the Purchaser's own expense and risk as soon as the goods have been handed over to the transportation company, or it has left the manufacturing plant, and this shall apply even when partial deliveries are made or if we have taken on other services such as shipping costs, transport and setup. Costs for a shipment insurance shall be paid by the Purchaser. Any transportation damage shall be ascertained immediately against the shipping company by means of a factual report.
- (2) If goods have been installed by the Supplier, the Purchaser shall be obliged to carry out a final inspection immediately after installation work has been completed. In case of impediment the Purchaser shall carry out the final inspection within 12 work days (§ 12 par. 2 VOB part B) (German Construction Contract Procedures).
- (3) Goods ready for shipping or installation which are not collected by the Purchaser shall be stored at the cost and risk of the Purchaser. Invoicing shall be made at the same time.
- (4) With contracts with an agreed delivery time of more than 2 months we shall reserve the right to increase or reduce prices according to actual cost changes, especially when new labour agreements have been made or material prices have changed. We shall give proof of this upon the Purchaser's request.

6. Cleaning Instructions, Standards and Guidelines

- (1) The document "Manufacturer Declaration" in the respective valid version shall be part of the General Terms and Conditions and shall be shipped together with the order confirmation. The Supplier shall be prepared anytime to dispatch them for free upon request.
- (2) Colour differences as evaluated based on applicable German industry standards for colour findings and sheen level and the quality and test regulations of the "Gütegemeinschaft für Stückgutbeschichtung im Bauwesen e.V." (GSB), which shall explicitly be part of the content of these General Terms and Conditions.

7. Product Information

- (1) When used outdoors condensed water and dirt may occur inside illuminated elements. This is why we offer appropriate maintenance and cleaning services upon request in order to take care of those elements once a year. Water used outdoors instead of rain may get dirty due to rain water flowing down the facade, insects, leaves, soot, rain water as well as other environmental influences may contaminate the facade as well; these influences first remain in the backwater, causing the facade to get dirty.
- (2) Light reflections on the surface of labelling elements – also dependent on the viewing angle, light coming in and temperature – can cause a visual impression of uneven surfaces. This is no defect.
- (3) In case of installations, e.g. at facades, holes need to be drilled which may become visible when the installations are disassembled later.

8. Price

- (1) Our prices are quoted plus legal value added tax.
- (2) In case factors influencing the price (material, personnel, energy costs etc.) occurring between the time a contract is made and delivery, we shall be entitled to change the price within the contract accordingly if the contract is still to be fulfilled.

9. Payment conditions and Limitation Period of Work Compensation Claims

- (1) If not agreed otherwise, 1/3 of the price shall be due at ordering and installation or supply readiness, respectively, the remaining amount upon final inspection.
- (2) As default charges 2% above the interest rate laid down by the German Central Bank shall be paid. It shall be up to the Supplier to call for a higher interest demand. Default shall occur after 30 days after invoice reception, if not, as an exception, a longer or shorter payment period has been agreed upon. In case of payment default interests shall be charged, apart from that all due and collection fees shall be refunded.
- (3) Compensation rights shall only be due to the Purchaser if his counter-claims are legally valid, undisputed or acknowledged by us. He shall be entitled for a right of retention only insofar as his counter-claim arises from the same contractual relationship.
- (4) Travellers, agents, technicians and drivers of the Supplier shall only be entitled to accept payments if they have a respective authorisation.
- (5) The violation of payment conditions or circumstances the Supplier gets to know of after the respective contract has been concluded and which make him believe based on objective reasons, that the Purchaser is insolvent, the Purchaser shall be obliged to pay all claims immediately including running bill liabilities. In such a case the Supplier shall be entitled to cancel the contract and to call for compensation for the damage he has suffered from this, excepting being the Purchaser makes an advance payment and registers sufficient securities.
- (6) Claims of the Supplier on work compensation shall become invalid after five years.

10. Reservation of Ownership

- (1) All goods of the Supplier shall remain in his ownership until all claims against the Purchaser arising from the business relationship including all future claims, arising also from contracts made at the same time or later, are settled. This shall also apply to payments on specially emphasized claims.
- (2) In case of open accounts the reserved ownership shall serve as a security of the Supplier's balance claims.
- (3) The Purchaser shall be entitled to re-sell the goods within the scope of proper business; however, he shall transfer all claims at the amount of the invoice total amount (including value added tax) to us, arising from the re-selling against his buyers or third parties, independent from whether he has sold the goods before or after processing.
- (4) The Purchaser shall be entitled for collecting this claim also after having transferred the rights. The Supplier's authorisation to collect the claim himself shall remain unaffected. However, the Supplier shall commit himself to collecting the claim not himself, as long as the Purchaser fulfils his payment obligations from the profit he has made, if he does not pay late or if there is a default, and especially if there is no application on insolvency proceedings handed in. But if this is the case the Supplier may demand the Purchaser to name the transferred claims and their debtors, that he provides all data required for collection, hands over the respective documents and informs debtors (third parties) about the transfer.
- (5) The processing or re-working of the delivered goods through the Purchaser shall be considered made on behalf of the Supplier. Goods are processed together with items which do not belong to the Supplier, the Supplier shall be co-owner of the new item at the relation of the value of the delivered goods to the other processed items at the time of the processing. To the item evolved through processing the same shall apply as to the goods delivered under reservation.
- (6) If goods are mixed with items that do not belong to the Supplier in an inseparable way, the Supplier shall be co-owner of the new items at the relation of the value of the mixed goods to the other processed items at the time of the mixing. If the mixing is carried out in a way so that the Purchaser's item is to be considered the main thing it remains the property of the Purchaser and the Supplier shall be co-owner of the Supplier proportionally. The Purchaser shall keep this new sole ownership or co-ownership for the Supplier.
- (7) The Supplier shall be obliged to unpeg the securities due to him upon the Purchaser's request insofar as the value of his securities exceeds the claims to be secured by more than 20%; the Supplier shall be entitled to choose the securities to be unpegged. With ordinary reservation of ownership the value of the securities is measured by the respective invoice amounts, with assignment of claims by the invoice amounts of the Purchaser from re-selling. With further processed goods the value of securities is defined by the Supplier's re-deployment price. This information is given to the Purchaser along with raising of the claim of the expanded ownership reservation in writing. From the reception of this information the Purchaser may give proof to the Supplier of buyers who are willing to pay a higher price than the re-deployment price, within a period of 14 days. As soon as payment is secured the Supplier shall be obliged to unpeg the respective goods assigned as security.
- (8) The Purchaser shall be obliged to insure reserved goods against fire and water damage, against theft, against burglary and against damage by his own expense.
- (9) With payment by cheque or reverse bill of exchange ownership reservation shall only cease to exist at all stages when the Purchaser has made all payments towards the Supplier.
- (10) The integration of individual claims into an open invoice or the balancing with current account shall not make our reservation of ownership not cease to exist at all stages. If the Customer integrates a claim of a re-selling of goods transferred to us into a current account existing with his customer, the current account claim shall be transferred to us to its full amount. After balancing the acknowledged balance shall take its place, transferred to the amount of our initial claim.

11. Warranty and Notice of Defects

- (1) Notice of defects of the Purchaser within the scope of a purchase contract or a contract for work and materials shall have as a precondition that the Purchaser has carried out his mandatory test and notification obligations.
- (2) The Supplier shall be informed immediately about visible defects of the goods, within one week after the goods have reached their final destination at the latest. Defects that cannot be detected within that time even after the most careful examination, shall be rebuked in writing right after their detection and with immediate stop of any processing or usage, but within the legally regulated warranty period at the latest. Colour differences which are customary in the trade and material tolerances shall not be considered a defect and shall not entitle for a notice of defects. In all warranty cases the ascertained defects shall be based on manufacturing or material defects.
- (3) For defects of the goods or the work performance the Supplier shall first provide warranty through carrying out a rectification or through delivering new goods free of defects. In case of a removal of defects or replacement delivery we shall be obliged to bear all requirements for the purpose of rectification, especially transport, routing, work and material costs, as far as these do not increase through that the purchased goods are brought to a different location than the place of fulfillment.
- (4) In the case of a replacement delivery the defective goods shall be sent to us.
- (5) Defects of a part of the delivered goods shall not entitle to object to the whole shipment, this shall only be possible if the defective part of the shipment cannot be used by the Purchaser.
- (6) If the Purchaser does not definitely and seriously accept the fulfillment or the rectification of the defect and the rectification fails or if it is unacceptable for the Purchaser, he shall be entitled to demand, as he sees fit, a price reduction or rescission of the contract and compensation within the scope of the liability restrictions.
- (7) We shall be entitled, regardless of § 275 par. 2 and par. 3 BGB (German Civil Code), to refuse rectification if this can only be done with disproportionate costs.
- (8) As far as the Supplier is not responsible for a violation of obligation resting within a defect, the Purchaser shall not be entitled to cancel.
- (9) Rights of the Purchaser concerning defects which do not affect a building or a work, existing for rendering planning and monitoring services for that purpose, shall expire by limitation from one year after reception of the work. The short limitation period shall not apply when the Supplier has acted with gross negligence, also in the case of damage to body and health caused by the Supplier or if the Purchaser loses his life. Any liabilities of the Supplier in compliance with the product liability law shall remain unaffected.
- (10) In case of material concealment of defects or with taking on a warranty for the future any further claims shall remain unaffected.
- (11) Warranty shall be excluded insofar as defects of the facility in question are based on that operating devices or accessories not purchased from the Supplier have been used or, if delivered facilities have not been installed correctly by a third party or if these facilities have been operated in an improper manner by the Purchaser, furthermore, when a company not authorised by the Supplier interferes with the facility.
- (12) The warranty shall not apply to wear parts, which have been destroyed by improper handling, improper operation or by improper storage conditions. There shall be no warranty for equal replacement (identically constructed parts or assembly groups).
- (13) Warranty shall also not apply to natural wear and to defects caused by improper usage or treatment, negligence with maintenance, excessive use, unusually aggressive environmental conditions as well as by installation carried out by a third party (not by us or subcontractors acting on our behalf) or if the Purchaser has installed the facility on his own.
- (14) Caretaking and maintenance shall be carried out following the description in the cleaning instructions.
- (15) Inoperative illuminants and fuses as well as colour differences customary in the trade and material tolerances shall not be considered defects. The control gears must not be exposed to environmental temperatures of +50°, automatic shutdown shall not be considered a defect.

12. Limitation of Liability

- (1) In case of violation of the obligations caused by slight negligence the Supplier's warranty shall be limited to, by the nature of the work, foreseeable, contract-typical and direct average damage. This shall also apply to violations of obligations caused by negligence of the Supplier's legal representatives or his agents. Against companies the Supplier shall not be liable in case of violations of minor contractual obligations caused by slight negligence.
- (2) Forementioned limitations of liability shall not apply to the Purchaser's claims arising from product liability. Furthermore, limitations of liability shall not apply to damage to body and health caused by the Supplier and to loss of life of the Purchaser caused by the Supplier.

13. Place of Fulfillment and Jurisdiction

- (1) The Purchaser shall only be permitted to transfer his rights arising from this contract to a third party only after the Supplier's approval. The same shall apply to transfers of claims against the Supplier.
- (2) As far as not arising from the order confirmation otherwise, place of fulfillment of the mutual relationship shall be New Ulm.
- (3) German law shall apply upon legal relationships with the Purchaser, however under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (4) For all contractual and non-contractual lawsuits the local and internationally only place of jurisdiction shall be the court in charge of the location of the Supplier's headquarters, if the Purchaser is Kaufmann or if his usual or general residence is not within the Federal Republic of Germany. This jurisdiction shall particularly exclude any other jurisdiction legally provided due to a personal or factual context. The Purchaser shall also not be entitled to shift the court charge, compensation or retention against us before a court other than the only court in charge. However, in individual cases the Supplier shall be entitled to file a lawsuit also at the Purchaser's headquarters or at other courts in charge, due to domestic or foreign law.
- (5) In case one or multiple conditions shall be invalid partially or wholly, the validity of the remaining conditions shall remain unaffected. As far as a valid and suitable part is contained within the invalid clauses, this shall be maintained. The parties shall be obliged already now to make a substitute provision that comes closest to the economic result of the deprecated clause.