

# GENERAL TERMS AND CONDITIONS OF PURCHASE – KSB SAS

## 1. Recitals

The purpose of these terms and conditions of purchase (hereinafter 'Terms and Conditions of Purchase') is to define the terms and conditions under which KSB SAS, hereinafter referred to as 'KSB', places orders with a Supplier of goods (fittings, equipment, etc.) and/or services (studies, works, services, etc.) hereinafter referred to jointly as 'the Supplies'.

The term 'Supplier' refers to the company that undertakes to fulfil the order.

These terms and conditions shall govern the order, of which they shall form an integral part. They shall prevail over all other terms and conditions, in particular the Supplier's terms and conditions of sale, unless they are amended or in conflict with special terms and conditions or clauses relating to a given order. Amendments of or exceptions to these Terms and Conditions of Purchase shall only apply if they have been the subject of a written agreement between the parties and shall only apply to the order in question. The Supplier shall not be entitled to rely thereon for other orders.

Verbal undertakings and agreements shall have no effect unless they have been the subject of a written document.

## 2. Acknowledgement of receipt

Within a maximum of **eight** days following the date of receipt of the order, an acknowledgement of receipt, duly signed, shall be sent to KSB. After this time, the order shall be deemed to have been accepted by the Supplier together with all the special terms and conditions contained therein and these Terms and Conditions of Purchase.

Only changes communicated in writing within the above-mentioned period and expressly agreed to by KSB shall be valid.

## 3. Order fulfilment

- **3.1** The Supplies that are the subject of the order must comply with accepted practices and with the laws, regulations and standards in force which apply to them.

- **3.2** The Supplier shall be responsible for obtaining, at the appropriate time, all the information it shall require to fulfil the order successfully. Upon receipt of said information, the Supplier shall be responsible for checking that the information provided by KSB (such as plans, specifications, technical data sheets, etc.) is not obviously incorrect, imprecise or incomplete. If the Supplier finds that this is the case, it shall immediately inform KSB in writing.

No changes may be made to specifications or plans provided or approved by KSB and, generally, to any document used as a basis for placing an order, unless KSB has previously agreed thereto in writing.

The provision of plans to KSB or the approval thereof by KSB shall not in any way release the Supplier from its liability for the order in the event of an error.

- **3.3** The Supplier undertakes to provide all the plans, drawings, calculation notes or any other document, as defined at the time of the order, in the number of copies and within the times agreed contractually.

## 4. Intellectual property – Copyright infringement

- **4.1** The Supplier warrants that it has an unrestricted right to use all intellectual property rights relating to the Supplies.

As a result, the Supplier shall indemnify and hold harmless KSB from and against any claim or action instituted by third parties on the basis of an infringement of their intellectual property rights, in such a manner that KSB shall not be liable in any way and shall not sustain any damage or bear any costs on account thereof.

- **4.2** In the event of a prohibition on using the Supplies, the Supplier shall, at its expense and within a reasonable period of time, either replace the item that is the subject of the prohibition or change it such that there is no longer any copyright infringement, in compliance with contractual specifications. Failing this, the Supplier shall reimburse KSB for the price of the Supplies.

## 5. Models –Tools –Documentation

- **5.1** The models, sample, tools and any other means of manufacture, as well as the plans, calculation notes and any other document and material, directly or indirectly made available to the Supplier by KSB or created by the Supplier in the name and on behalf of KSB, shall remain solely KSB's property.

They may not be used by the Supplier for any purpose other than the fulfilment of KSB's order and may not be made available to third parties unless KSB has agreed thereto in writing.

- **5.2** The Supplier undertakes to return to KSB or, at KSB's request, to destroy, any model, sample, tool and any other material means of manufacture made available to the Supplier or manufactured by it on the basis of KSB's special instructions, as well as any plan, drawing, calculation note and any other document, including copies.

- **5.3** The Supplier shall not have any right to secure these goods by means of a security interest or to pledge them.

## 6. Confidentiality

- **6.1** Any information that is of a confidential nature or that is declared by KSB to be confidential, on any type of medium, and provided by KSB to the Supplier shall be KSB's property. It may only be reproduced, transmitted or disclosed, in whole or in part, with KSB's prior agreement in writing.

- **6.2** The Supplier undertakes to keep confidential and not to disclose any confidential information and other knowledge relating to KSB's manufacturing processes or business that was acquired during the fulfilment of the order or obtained during said fulfilment, unless KSB has given its prior agreement in writing.

- **6.3** The Supplier undertakes to indemnify KSB for all the consequences, in particular the financial consequences, of any failure to comply with the above-mentioned undertakings.

## 7. Quality assurance –Controls –Audit

- **7.1** The Supplier shall maintain a quality assurance system that fulfils the requirements of the DIN-EN-ISO 9001 standard in force and must be able to provide evidence to KSB of the corresponding certifications.

The Supplier shall certify the quality of the Supplies by issuing a quality control certificate at KSB's request. If the Supplier does not have the certification required, said Supplies shall comply with the most recent technological developments and the latest regulations in force.

If the Supplier is required to comply with regulations such as PED, ATEX, etc., its quality system must be certified by an accredited European body.

- **7.2** The Supplier's Supplies shall include all controls and tests defined in the order. Costs relating to control, acceptance or approval services provided by any qualified body appointed by KSB or required by the laws in force shall be borne by the Supplier.

If the order provides for KSB to be present during testing, the Supplier undertakes to inform KSB promptly of its availability, within the time period defined in the order, in order to jointly set the date of said testing and inspections. If the test cannot be conducted on the date agreed due to the Supplier or if faulty Supplies make further tests necessary, KSB shall be entitled to reimbursement by the Supplier of the costs generated by these tests.

- **7.3** KSB shall check the Supplies delivered by the Supplier upon receipt thereof, in terms of quantity and the external condition of said Supplies so as to make any standard qualifications, under the conditions and within the time periods laid down in transport regulations. In the event of any damage (missing or damaged goods) or non-conformity discovered during these checks, KSB shall immediately inform the Supplier thereof. This shall also be the case in the event of any defect or non-conformity discovered subsequently.

- **7.4** Provided it informs the Supplier beforehand, KSB, its customer or their representatives shall be entitled to conduct audits in the facilities of the

Supplier and of its subcontractors. These audits shall relate to the Supplier's compliance with all its obligations and its quality system, within the scope of the order or of the Supplies. The Supplier shall provide KSB with the necessary assistance to conduct these audits.

Audits conducted by KSB shall not reduce the Supplier's liability in any way and shall not affect KSB's right to reject all or some of the Supplies at the time of delivery.

## 8. Acceptance of the Supplies

The Supplies shall be accepted after KSB has checked the quality and compliance of the Supplies with the order and, where applicable, after KSB has received the contract documents (certificates, plans, etc.) and, more generally, any document provided for in the order, including documents and information relating to the safety and use of the Supplies.

The absence of any rejection when the Supplies are delivered and/or payment by KSB shall not be considered as acceptance.

## 9. Rejection [of Supplies]

- **9.1** In the event the Supplies do not comply with the provisions of the order or do not meet the performance requirements pursuant to the order, KSB reserves the right to reject the Supplies in question.

In the event goods are rejected, KSB shall make the rejected Supplies available to the Supplier at the place of delivery for 15 days. After this period, KSB reserves the right to return said Supplies to the Supplier, at the Supplier's cost and risk.

- **9.2** At KSB's discretion, the rejected Supplies may be replaced or their value may be deducted from the amount of the corresponding invoice, or reimbursed, in the event payment has already been made, by a credit note drawn up by the Supplier.

- **9.3** In any event, the costs relating thereto shall be borne by the Supplier. Details showing how these costs were calculated may be provided on request.

## 10. Delivery

### - 10.1 Terms and conditions of delivery

The terms and conditions of delivery (time limit, date, place, etc.) shall be specified in the order.

KSB reserves the right to reject the delivery in the event said delivery does not comply [with the order].

The Supplies delivered shall be accompanied by a delivery advice note drawn up by the Supplier containing all the information required to identify said Supplies, in particular the order reference, job number, quantity and description, code of item, complete packaging data and name of carrier.

The Supplier shall provide the exact quantities ordered. Any partial delivery shall require KSB's prior agreement in writing.

### - 10.2 Packaging

The Supplier shall be responsible for packaging which shall be appropriate for the means of transport used and for the Supplies shipped, in accordance with standards in force and with accepted practices.

In addition to any additional specifications in the order, packaging shall be designed and manufactured so as to maintain the Supplies in good condition during the various handling operations, carriage and throughout the period of storage.

### - 10.3 Delivery times –Penalties for late delivery

**10.3.1** Compliance with delivery times or dates set in the order shall be mandatory.

The obligation to comply with contractual delivery times shall apply not only to the complete and compliant delivery of the Supplies but also to the remittance to KSB, at the place of delivery contractually agreed, of all the technical and/or administrative documents provided for in the order of which they form an integral part.

Where failure to comply with delivery times or dates is foreseeable, the Supplier shall immediately inform KSB, in writing, of the extent and the reasons for said failure to comply.

**10.3.2** Except in a case of force majeure (pursuant to Articles 1147 and 1148 of the French Civil Code), if contractual delivery times are not met, the Supplier



shall automatically be required to pay penalties for late delivery.

The terms and conditions and amount of these penalties shall be defined in the order. They do not release the Supplier from any obligation and shall not affect KSB's right to claim damages from the Supplier for any losses sustained due to the late delivery.

### 11. Carriage

Unless otherwise specified in the order, the Supplier shall be personally responsible for arranging the carriage of Supplies and for insuring Supplies transported to the place of delivery. Carriage shall be at the Supplier's risk.

### 12. Transfer of title and risk

- **12.1** Title to the goods shall pass upon delivery, unless payment has been made, in whole or in part, prior to the date of delivery. In this case, title shall pass as soon as it is possible to identify the Supplies and the Supplier undertakes to segregate the Supplies in KSB's name as the Supplies are manufactured, so as to ensure that they are not combined with its stock or other supplies.

- **12.2** The Supplier waives its right to assert any retention of title clause that has not been expressly agreed to by KSB. It warrants that the chain of its suppliers and subcontractors will also waive any such right.

- **12.3** Unless provided otherwise in the order, risk shall pass upon delivery of the Supplies at the agreed location, unless the Supplies are rejected, in accordance with Clause 9 above.

### 13. Prices

Unless provided otherwise in the order, the prices stated in the order shall be firm, fixed and may not be adjusted. The prices stated are net prices (including in particular packaging, carriage and insurance costs, customs duties, etc.) and are stated exclusive of VAT.

The Supplier shall bear all duties, taxes, fees and payments for which it is liable.

### 14. Invoicing –Payment

- **14.1** In the absence of any special provisions in the order, three copies of invoices shall be issued and they shall be made out in the name and with the address of the KSB site that placed the order. They shall include, in particular, the references of the order and of the delivery advice note, the amount [payable] excluding tax, the amount of VAT and the amount [payable] including all taxes, and any other information required by the regulations in force.

Invoices shall only be issued for complete Supplies and in accordance with the conditions of the order. Invoices may only be issued for Supplies delivered prior to the delivery date referred to in the order after said delivery date.

- **14.2** KSB reserves the right to reject any invoice that does not meet the requirements set out above.

- **14.3** In the absence of any special terms and conditions in the order, the Supplier's invoices shall be paid by bank transfer or cheque. It is understood that the amount paid shall include any penalties for late delivery calculated in accordance with Clause 10.3.2 above.

Payment shall be made subject to a delivery being acknowledged as complete and in compliance with contractual terms and conditions.

- **14.4** Any late payment of an invoice, due solely to KSB, shall give rise to the application of late payment interest equal to three times the legal interest rate.

- **14.5** In the event an item ordered is delivered in part without KSB's prior agreement, the due date of payment for the whole of this item shall be calculated from the date of receipt of the remainder of said item.

- **14.6** Any advance payments, in accordance with the special terms and conditions of the order, shall be paid by KSB upon the submission by the Supplier of a joint and several bank guarantee for the return of the advance payments, without any cost for KSB.

### 15. Warranty

- **15.1** The Supplier warrants:

\* the Supplies against any defects in terms of design, construction or material,

\* the proper fulfilment and compliance of the Supplies with the specifications of the order and with the

standards and regulations in force which apply to the Supplies, both as regards technical matters, health and safety and the environment,

\* that it complies with all the laws, regulations and requirements applicable to the Supplies such that said Supplies may be lawfully purchased, sold, transported or exported,

\* that the Supplies are not subject to any pledge or lien and that it is entitled to freely dispose thereof.

**15.2** The Supplier undertakes to hold the Supplies harmless against all faults and defects that adversely affect the proper use and/or performance thereof for a mechanical warranty period of 24 months as from the date the Supplies were effectively put into service at the premises of KSB's customer and within the limit of 30 months after delivery to KSB. The order may provide for a longer warranty period. The Supplier undertakes, during this period, to repair or replace any item, part of equipment or any equipment acknowledged to be faulty, at its expense, and as quickly as possible.

Any item or part of equipment or any equipment changed, repaired or replaced shall, after repair, be covered by a warranty with the same scope and duration as the original warranty.

This mechanical warranty does not cover normal wear and tear and/or faults due to conditions of use that violated the Supplier's instructions as provided to KSB by the Supplier.

- **15.3** In the event the Supplier is unable to carry out the work requested, KSB reserves the right to carry out such work or arrange for it to be carried out by a third party company, at the Supplier's expense, without prejudice to the application of Clause 22 below, after KSB has given prior formal notice that has gone unheeded for 72 hours.

The Supplier may not use the work performed by the third party company or by KSB as a reason to limit or exclude its liability under the contractual warranties.

### 16. The REACH regulation

If the Supplies contain chemical substances that mean that such Supplies are subject to the 'REACH' regulation (Regulation (EC) No. 1907/2006, hereinafter the 'REACH Regulation'), the Supplier warrants that it complies with, and ensures that its subcontractors or suppliers comply with, all the obligations set in the REACH Regulation and any subsequent amendments thereto. All the consequences of any failure to comply with the REACH Regulation shall be borne by the Supplier. In the event the Supplies may no longer be marketed due to the REACH Regulation, the Supplier shall notify KSB in writing of the date marketing is to end, giving at least six months' notice, unless longer notice is required as stated in the order.

### 17. Liability –Insurance

- **17.1** In the absence of any special provisions in the order, the Supplier shall be liable to KSB, its agents and to third parties for any damage [or loss] of any kind relating to the Supplies or, more generally, to the fulfilment of the order.

- **17.2** The Supplier shall take out adequate insurance cover and maintain it in force, at its expense. It undertakes to provide KSB, on request, with evidence of the insurance cover and the amount thereof.

The scope and amounts of this insurance cover shall not limit the Supplier's legal or contractual liability.

### 18. Health and Safety –Environment

When the Supplies are delivered or provided if they are services, to or in the locations stated by KSB, the Supplier undertakes to comply with, or to ensure that its agents and any subcontractors comply with, the rules in force at the site specified by KSB as regards health and safety and the environment, as well as the applicable laws and regulations in such fields.

### 19. Preventing undeclared work

The Supplier declares that all its staff and the staff of any subcontractors involved in the fulfilment of KSB's order are employed and declared in accordance with the applicable laws.

The Supplier undertakes to provide KSB, no later than when the order is accepted, and every six months until the order has been completed, with the documents provided for in Article D.8222-5 or Article D.8222-7 of

the French Employment Code, depending on whether the Supplier has its head office in France or abroad.

### 20. Compliance

KSB and its agents have undertaken to act professionally and honestly, in a situation of competition at worldwide level, and this includes compliance with statutory rules and ethical principles. KSB and its agents expect the same undertakings to be made by their business partners. Corruption and fraud in particular will not be tolerated.

As a result, the Supplier declares that it is familiar with the Code of Conduct as well with the KSB Group's guidelines on preventing corruption and certifies, on behalf of its agents and subcontractors, that it acts in accordance with these guidelines.

In the event of any breach of this clause, KSB shall have the right to immediately terminate its contractual relationship with the Supplier. In addition, the Supplier shall be required to pay a fixed penalty in the amount of EUR 50,000.

### 21. Assignment –Subcontracting

- **21.1** The Supplier may only assign all or part of the order to a third party with KSB's prior agreement in writing.

- **21.2** Where the Supplies are products/equipment manufactured in accordance with KSB's specifications or where services are provided, the Supplier may only subcontract all or some of the said Supplies with KSB's prior agreement in writing.

In any event, the Supplier shall retain responsibility for the fulfilment of the order and shall guarantee compliance by any subcontractor(s).

### 22. Cancellation

- **22.1** Either party may automatically cancel the order, in whole or in part, if the other party fails to fulfil one of its contractual obligations, after formal notice given by recorded delivery letter with advice of receipt or in a similar way has gone unheeded for 30 days.

In particular, KSB may cancel the order, in whole or in part, in the event of a failure or breach relating to the quality or the performance of the Supplies.

- **22.2** KSB may cancel the order automatically, without formal notice:

\* in the event of repeated failures or breaches by the Supplier,

\* in the event of a breach by the Supplier of one of the applicable health and safety or environmental protection rules, or

\* pursuant to Clause 20 above.

In these cases, the cancellation shall take effect as from the Supplier's receipt of notice of cancellation.

- **22.3** The right for a party to cancel the order, in whole or in part, shall not affect its right to claim damages.

- **22.4** Unless public policy provides otherwise, KSB may cancel the order automatically and without formal notice in the event the Supplier is subject to insolvency proceedings or is declared bankrupt.

### 23. Governing law and settlement of disputes

Orders shall be governed by French law.

Any dispute that cannot be settled amicably shall be referred to the courts in the district of KSB's registered office.



**KSB S.A.S.,**

4, allée des Barbanniers, F-92635 Gennevilliers Cedex

Tel: +33 (0)1 41 47 75 00

• Fax: +33 (0)1 41 47 75 10

• <http://www.ksb.com>