

# General Purchasing Terms and Conditions

## of Kistler Instrumente AG

### 1. Scope

These General Purchasing Terms and Conditions (hereinafter referred to as "GPTC") shall apply to all purchases made by Kistler Instrumente AG, Eulachstrasse 22, CH-8408 Winterthur (hereinafter referred to as "Kistler"), from its suppliers.

Other conditions, especially the suppliers' terms and conditions of supply, shall only be valid if they have specifically been acknowledged in writing in advance.

Should individual provisions of these GPTC be invalid, void or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. Invalid, void or unenforceable provisions shall be replaced by provisions approximating as closely as possible the intended purpose of these GPTC.

### 2. Conclusion of Contract

Purchase orders shall only be binding if issued or confirmed by the purchasing department of Kistler in writing. This also applies to changes and amendments to purchase orders requested either by Kistler or by the supplier.

Purchase orders shall be confirmed by the supplier in writing.

Any technical change made with regard to earlier supplies or details shall be notified to Kistler immediately in writing. They shall entitle Kistler to amend or cancel the purchase order. In the latter case, no compensation shall be payable.

For the performance of the contract the drawings accompanying the purchase order or registered drawings shall be binding. The purpose of any sample parts shall simply be to explain the drawings.

Unless agreed otherwise, the sending of faxes and e-mails shall meet this written form requirement.

### 3. Prices and Payment

If nothing to the contrary is agreed, prices are fixed. If the supplier reduces its prices prior to delivery, the lower prices shall also apply to the current order and the agreed prices shall be reduced accordingly. For orders without fixed prices, the recommended prices shall be submitted to Kistler for approval prior to the commencement of work.

The prices established in the preceding paragraph shall include all packing, insurance, carriage and customs costs, as well as taxes and duties, but shall not include value added tax. These costs, as well as value added tax, shall be listed separately on the invoice.

Unless agreed otherwise, payment shall only be made after receipt of the goods at the place of destination and the relevant invoice. Payment shall be made either within 30 days with a 2 % discount or within 60 days net.

### 4. Title and Confidentiality

In accordance with the law applicable to tangible and intangible property, the title to drawings, tools, machines, caliber, models and material (hereinafter referred to as "Material"), which Kistler makes available to the supplier, or which the supplier produces for Kistler for the account of Kistler, or purchases in its own name but for the account of Kistler, and all rights of use derived therefrom, shall remain exclusively with Kistler. The Material shall be marked accordingly by the supplier. The Material shall be stored appropriately,

maintained and insured against damage by the supplier. The supplier may only use the Material for the performance of the contract. In particular, the supplier shall not use the Material for orders placed by a third party, publish it or otherwise make it accessible to third parties.

Tools and equipments purchased by the supplier for Kistler, as stated in the preceding paragraph, must be maintained, repaired or replaced by the supplier for the duration of the agreed service or operating life at its own cost. All warranty claims against the seller shall be made by the supplier.

Kistler is entitled to demand the return of the Material at any time. In this case, as well as when Kistler has completed all its purchases, or if the supplier discontinues supplies, the supplier shall return the Material (including all copies thereof) without delay to Kistler at its own cost and shall confirm, at the request of Kistler, that it has returned the Material in full, that it no longer has any copies of the Material (in electronic form or in any other form) and that the know-how disclosed to it through the Material is no longer used. The supplier shall, in all cases, waive any right of retention to the Material and to any copies thereof.

The supplier undertakes to treat as confidential all information it receives from Kistler in the context of their cooperation, whether this information is marked as confidential or not, and shall only use it in order to perform this contract. The supplier may only disclose such information to its employees insofar as this is necessary for the performance of this contract. The supplier shall properly ensure that its employees, auxiliary persons, suppliers and subcontractors comply with this obligation of confidentiality.

### 5. Place of Performance, Transport and Packaging

Unless Kistler has specified a different place of performance in the purchase order, or if the parties have specifically agreed otherwise in writing, supplies shall be delivered DDP to the production site of Kistler in Winterthur, Switzerland (ICC INCOTERMS 2000).

The contractual products shall be packaged and transported in accordance with commercial practice, or according to the instructions of Kistler.

### 6. Delivery Dates and Delay in Delivery

The delivery date shall be considered met if the contractual products arrive at the destination on or before the agreed delivery date. The supplier shall be in default if an agreed delivery date is not met without the need for Kistler to issue a reminder. Kistler may waive the setting of a reasonable period for supplemental performance and may, in the event of default, directly assert the applicable statutory claims.

Partial deliveries shall require the prior consent of Kistler and shall be clearly described in the delivery note or in the notice of dispatch as "partial delivery".

As soon as the supplier realizes that it will not be able to execute a delivery as agreed in the contract (in respect of quality or time), it shall inform Kistler without delay. The supplier is also required to take all reasonable steps to ensure that deliveries are made as agreed in the contract. The parties may agree a different delivery date in writing, provided the performance has not become futile for Kistler

The first paragraph of this clause shall apply unless otherwise agreed in writing.

For each week of default, the supplier shall pay a contractual penalty of 1 %, but no more than 10 %, of the purchase price. The payment of the contractual penalty shall not release the supplier from continued compliance with the contract. Kistler reserves the right to claim compensation in excess of the contractual penalty.

## 7. Warranty

The supplier warrants that the contractual products meet the agreed specifications, are of the agreed quality, are fit for the intended purpose, comply with the latest state of the technology, are free from defects in construction, material and execution, and comply with all relevant national and international regulations and conditions. The supplier is under an obligation to provide, at its own cost, the declarations and confirmations of the conformity of the contractual products with all applicable provisions (in particular those concerning basic health and safety requirements) demanded by Kistler in sufficient number and in the language specified by Kistler. The supplier shall grant Kistler, at the latter's request, access at any time to the results of risk analyses and the safety concept relating to the contractual products.

The agreed service or operating life of tools and equipments within the meaning of Clause 4(1) that the supplier produces for Kistler for the account of Kistler shall be considered warranted qualities.

The supplier shall ensure that repeat purchases are of uniform quality. Changes in terms of quality engineering shall only be allowed with the prior written consent of Kistler.

The supplier warrants that the intended use of the supplied contractual products by Kistler does not infringe any third-party rights.

Should Kistler discover defects in the contractual products supplied, it shall notify the supplier thereof. The supplier undertakes to repair or replace the defective contractual products as it sees fit. The supplier shall bear all the costs incurred in connection with the subsequent improvement (investigation, dismantling, transport, assembly, etc.). Should the supplier be unable to reinstate the contractual condition within a reasonable period of time Kistler shall have the right to demand a reduction in price or, in cases of serious defects, withdraw from the relevant contract or, at the cost and risk of the supplier, repair or replace the defective contractual products itself or have them repaired or replaced by a third party. Repaired contractual products shall be released by the supplier.

The warranty period shall be 24 months from acceptance of the contractual products or end product by the customers of Kistler. The warranty period shall, however, be no longer than 30 months from delivery by the supplier to Kistler. The warranty period shall start to run again upon supply of a replacement or repair. Kistler shall not be obliged to check the contractual products or to notify any defects immediately after they have been taken delivery of.

Payments made by Kistler shall not constitute a waiver of claims under warranty.

In all cases, Kistler may demand compensation for any loss it has directly or indirectly suffered through failure to perform or faulty performance. The supplier shall be liable for its sub-suppliers and subcontractors in the same way as for itself.

## 8. Product Liability and Product Recall

The supplier shall take out adequate product liability insurance. At the request of Kistler, the supplier shall demonstrate the existence of such insurance in writing.

If Kistler is prosecuted on the basis of provisions of applicable product liability law because contractual products are defective

within the meaning of these provisions, the supplier shall hold Kistler harmless against these claims. Kistler shall inform the supplier as soon as it learns about such claims so as to enable it to defend itself against unjustified claims. Kistler may hand the conduct of the case over to the supplier if it is clear that only the supplier's contractual products can be the cause of the loss.

If Kistler is of the opinion that products manufactured by Kistler need to be recalled due to faulty contractual products, Kistler shall notify the supplier immediately, provided that the delay does not represent a risk. The supplier shall bear the costs of the product recall if the recall has become necessary because of defects in the contractual products it has supplied. If several causes underlie a recall, the costs shall be borne proportionally, provided Kistler is responsible for one or more causes.

The claims of Kistler against the supplier in this regard shall become time-barred at exactly the same time as the claims of the injured third party against Kistler (i.e. in accordance with the regulations of applicable product liability law).

## 9. Duty of Information and Inspections

The supplier shall inform Kistler promptly in writing of any problems arising in connection with the contractual products.

Kistler, as well as its employees and advisors, shall have the right to inspect the supplier's premises following prior notification. The supplier shall cooperate. After consulting with Kistler, the supplier shall provide both finances and personnel in order to help solve the problem. If access is granted, Kistler shall keep the business secrets of the supplier confidential.

## 10. Termination of Contract

Kistler may end its purchases at any time with immediate effect through written notice to the supplier without giving reasons and terminate the relevant contract. The supplier shall promptly discontinue the performance of its contractual obligations as soon as it receives written notice of termination. In this case, Kistler shall pay the supplier the invoice value of the contractual products actually delivered to Kistler at the time the notice of termination is received. Additional liability on the part of Kistler does not exist.

Each party is entitled to terminate the contractual relationship for good cause at any time in writing without notice. A good cause is any circumstance that makes it unreasonable, in good faith, for the terminating party to abide by the contract, in particular any serious breach of contract by the other party or any repeated breach of contract, despite the other party being warned, as well as the opening of bankruptcy or administration proceedings concerning the other party.

## 11. Choice of Law and Jurisdiction

**Swiss law** shall exclusively be applicable. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

The exclusive place of jurisdiction shall be **Winterthur, Switzerland**. Kistler reserves the right to assert its rights at the headquarters of the supplier.