

# Kellner & Kunz AG

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## Conditions of Purchase

of Kellner&Kunz AG



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Only the present conditions of purchase shall apply. K&K do not accept Supplier's contradicting or deviating conditions unless K&K have expressly and in writing approved their validity. The present conditions of purchase shall also apply in case K&K accept Supplier's deliveries unconditionally while being aware of Supplier's contradicting or deviating conditions. The present conditions of purchase shall apply also for all future business with Supplier. Individual agreements that may be concluded with Supplier for individual cases (e.g. framework contracts and quality assurance agreements as well as collateral and complementary agreements and their amendments) will always have precedence over these General Conditions of Purchase.

**1. Orders:** Deliveries that are made without written order will not be accepted. K&K waive order confirmations unless any changes of amounts, prices or delivery dates are required. K&K reserve the right to accept these changes. Supplier are obliged to point out obvious mistakes (e.g. misprints and calculation errors as well as incompleteness of orders and of the order documents) so that these can be corrected and/or completed before acceptance.

**2. Compulsory information:** Before changing production processes, materials or supplied parts for products or services, production locations, methods or appliances for testing the parts or any other quality assurance measures Supplier must inform K&K sufficiently in advance so that K&K can find out if the changes may have a detrimental effect on the product.

**3. Secrecy:** All documents provided by K&K including drawings, sketches and samples are exclusively property of K&K. Supplier undertake not to make them accessible for third parties; to use the documents and samples exclusively for executing the orders; not to multiply the documents, to handle and keep the documents and samples with care and to return them to K&K immediately and completely after the orders have been executed. In particular Supplier will continue treating the production methods supplied by K&K as secret also after completing the orders and not use them for their own production or for supplies to competitors of K&K. K&K reserve all rights in new features provided by K&K – in particular in case any patent is granted or utility models are registered. Products that are made on the basis of information (e.g. drawings, models and similar) provided by K&K or on the basis of confidential information supplied by K&K must not be used by Supplier themselves; Supplier must neither offer or supply them to third parties.

**4. Passage of risk, place of performance:** In all cases the risk shall be borne by Supplier up to arrival of the goods at the receiving agency determined by K&K. The risk shall pass to K&K always upon transfer of the goods to the receiving agency determined by K&K. Supply shall be made within Austria to the place shown in the order. The destination shall in each case also be the place of performance. In case a place of performance has not expressly been determined Wels shall be the place of performance.

**5. Reservation of title:** Upon transfer of the goods to K&K title shall pass to K&K directly. K&K do not recognise any reservation of title.

**6. Pricing:** The price shown in the order is binding. Unless any other agreements have been concluded for individual cases the price shall include all services and collateral services provided by Supplier as well as all collateral cost (e.g. appropriate packaging, transport cost inclusive of any transport and liability insurance). Upon our request Supplier shall accept packaging material for return.

Price demands have to be announced by the supplier in writing at least three months before the beginning of the new quarter. This announcement does not automatically imply the acceptance of the demand.

**7. Partial deliveries, short and excess deliveries:** Partial deliveries do not constitute performance unless K&K approve them. Simple acceptance of a partial delivery does not constitute such an approval. In case of deliveries that are max. 5 % short of the order K&K shall be entitled to accept the respective delivery and cancel the missing rest of the delivery. K&K reserve the right to return to Supplier at Supplier's expense goods delivered in excess.

**8. Delivery date, penalty:** The delivery date given by K&K in the order is binding. Supplier undertake to perform at the agreed delivery date. As soon as Supplier become aware of delays Supplier must inform K&K of the delay, its causes and probable duration. In case Supplier are not able to perform at the agreed date, no matter for what reason, K&K shall be entitled to withdraw from the contract and acquire substitute deliveries from third parties and/or demand compensation for non-performance according to K&K's own choice. The above shall apply without prejudice to any further legal claims by K&K. K&K shall not have to set a period of grace. Supplier shall have to reimburse to K&K any additional cost caused by delayed delivery or service. Acceptance of the delayed delivery or service does not constitute a waiver of claims for compensation. In case delays occur repeatedly K&K shall be entitled to withdraw from the contract also if Supplier are not responsible for the delay. In the event that delivery is delayed due to reasons that are attributable to the supplier, the supplier waives the defense to consecutive violations of the same provision and is obliged to pay a contract penalty of EUR 50,per customer back order and per delayed article to K&K. K&K is also entitled to claim the contract penalty up to the final invoice if K&K did not expressly reserve this right when accepting the delayed delivery. The right to claim further damages remains reserved. Deliveries before the agreed date are permitted only with the consent of K&K. K&K reserve the right to return goods that were sent before the agreed date or to state a value date for the respective invoice.



**9. Form of delivery:** Deliveries must be made exclusively in accordance with K&K's separate regulations for transport and packaging for suppliers. The transport and packaging regulations in their respective applicable versions are part of K&K's conditions of purchase.

**10. Payment:** Unless any other agreements have been concluded payments shall be made on the 25th of each month that follows a delivery and performance as well as receipt of a correct invoice minus 3 % discount or 90 days net.

**11. Origin of goods, preferences, regulations in international commodity traffic:** Supplier undertake to present for all items delivered to K&K a long-term supplier's declaration confirming the legal preferential status of the goods ("Product having preferential origin status in the EU" or "Product without preferential origin status in the EU"). In case Supplier do not respect this obligation or in case of wrongly issued declarations Supplier shall be liable for any damage K&K suffers in consequence of this violation.

Supplier undertake to check if their products are subject to any prohibitions, restrictions and/or duty to obtain permits in international commodity traffic (e.g. with respect to the export list, dual use regulation, US re-export regulations, etc.) and in case that applies to mark the products with clear and unequivocal information in their offers, order confirmations and all documents accompanying the goods. In case Supplier do not fulfill the above requirement Supplier shall be liable for any damage suffered by K&K in consequence of this violation inclusive of all claims for reimbursement for foreign customs duties, levies, fines, etc. Decoding of designation of origin:  
D = third country / E = EU / F = EFTA

**12. Warranty:** In case of material or legal defects of the goods (incl. wrong or short delivery as well as faulty assembly, faulty manuals for assembly, operation or handling) and other violations by Supplier the legal regulations shall apply unless any other stipulations are made below. In accordance with the legal regulations Supplier shall be liable in particular for assuring that the goods have the agreed quality upon passage of risk to K&K. In each case shall apply the product descriptions that are subject matter of the respective contract in particular by inclusion or reference in the order – or that have been included in the contract in the same way as these conditions of purchase. In this respect it does not matter if the product description has been provided by K&K, by the supplier or by the manufacturer.

K&K shall be entitled to claims for damages without limitation also if K&K did not become aware of the defect upon conclusion of the contract due to gross negligence. For the requirement to check the delivery and to make a complaint in respect of a defect shall apply the legal regulations with the following proviso: K&K's obligation to check the goods shall be restricted to defects that can be detected by the incoming goods control by means of visual checks inclusive of the delivery documents and by random checks of our quality control personnel (e.g. damage in transit, wrong or short deliveries).

In case acceptance has been agreed K&K shall not be obliged to check the goods. In general, the decisive aspect will be to what extent a check will be feasible taking into account the circumstances of the respective case.

The above does not affect the obligation to make complaints about defects that are discovered at a later time. In all cases a complaint (notice of defects) shall be considered to have been made in time if Supplier receive it within two weeks. Supplier shall pay the cost of testing and repair also if it is found that the goods in question were not defective. K&K's liability to provide compensation for damages caused by unjustified claims for repair of defects remains unaffected. However, K&K shall be liable only if K&K found or in gross negligence did not find that the goods in question were not defective.

In case Supplier do not fulfil their obligation to take remedial measures (either by rectifying the defect or by delivery of a non-defective product as chosen by K&K) within a reasonable period determined by K&K the latter may rectify the defect themselves and claim from Supplier compensation for the expenses or respective advance payments. In case Supplier's remedial measures were not successful or are unacceptable for K&K (e.g. because of special urgency, danger for safety of operation or threatening disproportionate damage) no period need be determined. Supplier must be informed without delay – if possible in advance. Further, in case of material or legal defects K&K shall be entitled to reduce the purchase price or to withdraw from the contract as provided by law. In addition to the above the legal regulations entitle K&K to claims for damages and compensation of expenses.

Supplier respect the state of technology and the applicable legal and government regulations (in particular DIN, VDE, VDI, DVGW). On the day of delivery the goods must be in accordance with all applicable legal and government regulations including those of the law on safety of appliances and of environmental protection and they must satisfy the requirements of the safety regulations. In case Supplier deliver hazardous substances in the sense of the respective ordinance or products that may release such substances Supplier must provide for K&K or their service providers the data that are required for producing an EU-safety data sheet (Art. 14 GefStoffV (ordinance on hazardous substances) without being requested to do so.

**13. Recourse:** K&K are unlimitedly entitled to the legal recourse within the supply chain in addition to the claims for damages. In particular K&K are entitled in each case to demand that Supplier provide for K&K exactly the kind of remedial measure (rectification of defects or substitute delivery) that K&K owe their customers. This does not limit the legal right of choice. Before K&K recognise or fulfil a claim for damages raised by their customers (including reimbursement of expenses) they will notify Supplier and request a brief description of the matter and a written statement. In case the statement is not delivered within a reasonable period of time and no solution can be agreed the compensation that was actually provided by K&K shall be considered to be owed by K&K vis-à-vis the customer. In such a case it shall be Supplier's responsibility to prove the contrary.



K&K's claims under recourse to Supplier shall also apply in case the goods have been further processed by K&K or one of our customers (e.g. by being integrated into another product) before they were sold by K&K to a consumer.

**14. Product liability:** Supplier keep K&K free from all claims resulting from product liability outside the contract to the extent to which these claims arise due a defect of the product delivered by Supplier. Further, Supplier shall be liable for damage that K&K suffer because they have to take reasonable precautions against liability claims outside the contract that are to be attributed to Supplier (e.g. public advertisement). Supplier must be sufficiently insured against claims that may be raised against them in cases of product liability and they must be able to prove this insurance to K&K by presenting a respective insurance policy.

**15. Service providers:** Service providers that come to work on K&K's premises are obliged to sign K&K's external company agreement.

**16. Use of brand names of K&K:** In case K&K return any goods that bear a brand name or logo of K&K or do not accept such goods these goods must not be sold to third parties. In each case of violation shall be charged a penalty amounting to twice the value of the goods, but no less than € 15,000.00.

**17. Force majeure:** Strike, lock-out, disturbance of operation, orders by authorities and other cases outside the sphere of influence of K&K that may reduce the demand shall be considered to be force majeure and entitle K&K to withdraw from the contract.

**18. Industrial property rights:** In case of an intentional violation of industrial property rights Supplier shall keep K&K and their customers free from any claims of third parties resulting from the violation of copy rights, commodity rights and patents unless the design of the respective commodity has been provided by K&K.

**19. Prohibition of child labour:** The supplier commits himself to observe the minimum standards specified in the ILO core labor standards and to commit his own suppliers to observe said minimum standards with the help of specific contractual provisions. The supplier particularly commits himself to refrain from employing children. The supplier guarantees that his own suppliers do not employ children either. The term "children" covers all people under 15 years of age. In exceptional cases, children may be employed at 14 years of age if legislation in the country of production permits employment from the age of 14.

**20. Environmental Protection:** Protection of the environment plays an important role in K&K's comprehension of quality. K&K expects therefore from its suppliers an environmental consciousness corresponding to these guidelines.

**21. Regulation (EG) Nr. 1907/2006 (REACH):** The products delivered by the Supplier must comply with the provisions of the Regulation (EG) 1907/06 concerning the registration, evaluation, authorization and restriction of chemicals (REACH). If necessary under the Reach Regulation the substances of products must be pre-registered or respectively after ending of the transition period registered, if the substances are not excluded from registration.

Suppliers with their corporate seat in Non-EU countries are obliged to nominate an Only Representative according to Art. 8 Reach Regulation who has its corporate seat within the EU and who needs to be notified to K&K. The OR takes over all registration and all other obligations due to the Reach Regulation of the Supplier. In case OR has performed a pre-registration or a registration, OR needs to inform K&K stating the registration number respectively. K&K has to be informed immediately when another OR is nominated or OR terminates his actions.

The supplier insures that none of the products delivered by him contains any substances of the Candidate list according to the Reach Regulation Art 59 (1, 10).

Supplier undertakes to inform K&K immediately in writing if – for whatever reason - any of the products delivered contain a substance of the Candidate list; especially in the case of extension/amendment of the Candidate list. Supplier's information must be send via Email to [einkauf@reca.co.at](mailto:einkauf@reca.co.at). Information on the product, delivery note, order confirmation or invoice is not sufficient. Supplier will notify the substances by name and inform about percentage of mass as accurately as possible.

Supplier further confirms that all products delivered fulfill the requirements of Regulation (EG) Nr 1272/2008 (CLP Regulation). Especially Non-EU Suppliers are responsible for the notification of the delivered products in the classification and labeling directory by the OR according to Art 39-42 CLP Regulation.

In case the Supplier breaches the obligations written above, K&K is entitled to cancel the respective order any time and to reject the delivery with any costs. K&K's claims for damages will remain unaffected; the cancelation or rejection does not constitute any waiver of these claims.

**22. Contractual Language, applicable law and place of jurisdiction:** The contractual language is German. On the contract Austrian law under exclusion of UN Convention on Contracts for the International Sale of Goods is applicable. Place of jurisdiction for any disputes out of the contract is Wels. K&K is entitled to sue also at the registered office of the Supplier.

**23. Severability clause:** If one or more of the provisions above should be in whole or partially invalid, the validity of the remaining provisions shall not be affected thereby. The Parties agree that in such a case the provision shall be supplemented by valid provisions corresponding to the purpose of the invalid provision as far as possible.

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# Kellner & Kunz AG

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