

**KITZ EUROPE GMBH / PERRIN GMBH**  
**General Terms of Purchase (GTP, as of September 2020)**

**§ 1 – Application of GTP**

- 1.1 These **General Terms of Purchase ("GTP")** apply to all contracts, **KITZ Europe GmbH** and/or **PERRIN GmbH** as buyer (hereinafter jointly or severally "**Buyer**") enter into with an entrepreneur in the sense of § 14 of the German Civil Code ("**BGB**"), a legal entity under public law or a public-law special fund as seller ("**Seller**") on the purchase of raw materials, components, power units, accessory and spare parts (jointly "**Goods**") for the production and distribution of ball valves and on the performance of services (e.g. machining, coating, sintering, assembly, painting, maintenance, jointly "**Services**"), unless Buyer has explicitly excluded the application of these GTP.
- 1.2 Individual agreements take precedence over these GTP.
- 1.3 General terms and conditions of Seller shall only apply, if and to the extent Buyer has explicitly accepted them or consented to them. Apart from that, Buyer does not accept general terms and conditions of Seller. The tacit acceptance of Goods and Services or the execution of payments do not constitute acceptance or consent by Buyer of Seller's general terms and conditions.
- 1.4 This English translation of Buyer's German Allgemeine Einkaufsbedingungen ("**AEB**") is made for convenience only. In case of contradictions between this English translation and the German AEB, the latter shall take precedence.

**§ 2 – Conclusion and Subject Matter of Contract**

- 2.1 Buyer's offers and orders are made on the basis of these GTP. In case an offer submitted by Buyer is explicitly limited in time, Buyer is bound by that offer only until the last day of the time limit has lapsed or an indicated date has passed. If Buyer has excluded to be bound by the offer by designating the offer as "non-binding", the offer shall not be a binding offer but an invitation to Seller to submit a binding offer to Buyer.
- 2.2 A contract is concluded, when (1) Seller accepts Buyer's offer by issuing an order confirmation or by delivering the ordered Goods and, if the offer is limited in time, the order confirmation or delivery is received by Buyer within the time limit or (2) Buyer accepts Seller's offer by a written order, which may also be made by email. In case Seller's order confirmation or Buyer's order deviate from the underlying offer of the respective other party, they are deemed to be new offers. Deviations from Buyer's orders shall only become binding, if Buyer has explicitly confirmed them.
- 2.3 Buyer has the right to request changes of the agreed specifications even after contract conclusion, if the realisation of such changes is reasonable. If Buyer requests such changes, Seller will examine these changes with regard to their realisation and will immediately inform Buyer about the impact the requested changes will have on prices and delivery dates. On the basis of this information, Buyer will decide without delay whether these changes shall be realised or not.

**§ 3 – Delivery and Acceptance**

- 3.1 Unless explicitly agreed otherwise, the delivery dates specified in Buyer's offer or order shall be binding. If Seller is of the opinion that, in order to comply with binding delivery dates, a contribution of Buyer is necessary (e.g. provision of documents), Seller has to request such contribution from Buyer in writing in good time. The delivery shall be accompanied by the agreed documents, papers, certificates and labels (delivery notes, packing list, test certificates, test- and measurement protocols, certificates of origin, results of notched bar impact tests and other material tests, manufacturing specifications, safety data sheets, instructions and supplier declarations). Delivery notes shall state the gross/net weight of the delivery. Already prior to delivery, Seller will provide to Buyer, upon Buyer's request, drawings and/or 3D-models of the Goods in electronic format, which Buyer may forward to its customers.
- 3.2 Unless a different agreement has been reached in a particular case, the delivery of Goods is made DDP (Delivered Duty Paid) according to ICC INCOTERMS at the place of delivery designated by Buyer. In case no other place of delivery is designated, the place of delivery shall be the registered place of business of Buyer. Any reference to ICC INCOTERMS shall (unless explicitly indicated otherwise) be deemed as reference to the current version of the ICC INCOTERMS at the time the reference is made. In case of doubt, individual agreements and provisions in these GTP take precedence over provisions of the ICC INCOTERMS.

- 3.3 Immediately after dispatch of the Goods, Seller will provide Buyer with a dispatch note specifying the respective contract and order numbers. Buyer will immediately inform Seller if receipt of the Goods is not possible at the agreed delivery date. At the same time, Buyer will notify Seller as to when the receipt of the Goods is expected to be possible. Buyer has the right to postpone the delivery date by up to 14 days without any additional costs being charged. In the event Buyer is not able to take delivery of the Goods thereafter, Seller will store and, at Buyer's request, insure the Goods at Buyer's costs and risk until Buyer is ready to take delivery. After expiration of the 14-day period, Seller may set a reasonable time limit for the receipt of the Goods by Buyer. If Buyer does not take delivery of the Goods within the time limit, Seller may withdraw from the contract.
- 3.4 Seller has to ensure that the Goods are adequately protected against damage by appropriate packaging. Seller shall use environmental-friendly packaging. Upon Buyer's request, Seller has to take back and to properly dispose of any package material. Seller shall be solely responsible for any damage of the Goods caused by improper packaging.
- 3.5 Buyer will examine the Goods and their packaging and will report obvious defects to Seller in writing (including email) within ten (10) days after delivery. Defects that are not detectable in the course of such examination (hidden defects) will be reported by Buyer within ten (10) days after their detection. The date of dispatch of the report shall be decisive.
- 3.6 Buyer reserves the right to refuse acceptance of excess deliveries and partial deliveries. The same applies if the delivery is made earlier than agreed. In these cases, Buyer has the right to return the Goods at Seller's costs and risk. If Buyer decides to take delivery of early shipments, the Goods are stored at Buyer's premises at Seller's costs and risk until the agreed delivery date. Early delivery does not affect the agreed payment due dates. If payment due dates are calculated depending on delivery dates, the agreed delivery dates shall also be relevant in case of early delivery.
- 3.7 The title to the Goods shall pass to Buyer in accordance with the applicable statutory provisions.

#### **§ 4 – Performance of Services, Acceptance**

- 4.1 Seller is obliged to perform all Services properly and according to Buyer's specifications and the latest state of the art. Seller has to comply with all statutory provisions and safety regulations applicable at the agreed place of performance. Seller will notify Buyer in writing immediately in case of concerns regarding the performance of the Services as specified by Buyer.
- 4.2 In case an acceptance of the Services is contractually agreed or provided for by statutory provisions, Buyer may request changes as long as the Services have not yet been performed and such changes are reasonable. Seller has to inform Buyer about additional costs or reduced costs or changes of the agreed terms or dates resulting from the requested changes. Buyer has the right to refuse acceptance if the respective Services have not been provided in full or have been provided defectively.

#### **§ 5 – Late Delivery and Contractual Penalties**

- 5.1 Seller will inform Buyer in writing immediately as soon as Seller becomes aware that the delivery of Goods or the performance of Services will probably not occur in time. Seller shall take all necessary and reasonable measures to ensure compliance with agreed delivery dates and to reduce any delay as far as possible. The agreed delivery dates shall remain unaffected. At the same time, Seller will inform Buyer about the reasons for the delay and provide a new delivery date. The unconditional acceptance of late delivery of Goods or late performance of Services does not constitute a waiver by Buyer of any contractual or statutory claims Buyer may have because of the delay.
- 5.2 In case the delivery of Goods or the performance of Services is delayed, Buyer has the right to claim payment of a contractual penalty. The contractual penalty shall be equal to 1.0% of the net invoice amount for each commenced week of delay, but not exceeding 10.0% of the net invoice amount. The contractual penalty is due for payment as soon as Buyer claims payment, but not before a due date as specified by Buyer. Buyer may claim payment of contractual penalties until the final payment is due, even if Buyer did not reserve the right to do so when taking delivery of Goods or Services. In addition, Buyer has the right to set-off claims for payment of contractual penalties against Seller's claims for payment of the purchase price or remuneration resulting from the same contractual relationship.
- 5.3 In case the delivery of Goods or the performance of Services is delayed, Buyer may set a reasonable term for Seller to deliver the Goods or perform the Services. In case the delivery or performance does not occur within this term, Buyer may withdraw from the respective contract and/or raise any statutory claims he might have. The same applies if the maximum contractual penalty as provided for in § 5.2 is forfeited and delivery or performance has not occurred.
- 5.4 In any case, Buyer has the right to claim compensation of all damages caused by the delay. In case the damages claimed exceed already forfeited contractual penalties, the penalties shall be credited against the damages.

#### **§ 6 – Prices and Payment Terms**

- 6.1 The prices laid down in Buyer's offer or order shall apply.
- 6.2 Seller's invoices shall specify Buyer's respective order number. Invoices shall be sent by separate mail and shall not be attached to the respective delivery of Goods.
- 6.3 The payment terms and discount agreements as specified in Buyer's offer or order shall apply. In case no specific payment terms are agreed, the payment term shall be 60 days and shall commence with the receipt by Buyer of Seller's invoice, but not before the complete delivery of Goods (including the documentation provided for in § 3.1) or the acceptance of Services. If payment is made within 14 days from receipt of invoice, Seller grants a discount of 3%.
- 6.4 By settlement of an invoice, Buyer neither accepts the invoice itself nor the Goods or Services invoiced thereunder as being in accordance with the contract. The same applies if Buyer makes advance payments or partial payments.

#### **§ 7 – Warranty**

- 7.1 Seller warrants that the Goods and Services are free from any defects and comply with the agreed specifications. If a specific purpose of use of the Goods has been agreed, Seller warrants that the Goods are appropriate and admitted for that purpose. If a specific purpose of use is provided for contractually, Seller has to notify Buyer immediately in writing if Seller has concerns regarding that purpose of use, and to give reasons. Seller also warrants that the Goods and Services are state of the art and comply with the applicable security and approval regulations at the agreed place of destination.
- 7.2 In case of a defect of the Goods or Services, Buyer has the right, at its own choice, to either claim remedy of the defect or the delivery of defect-free Goods or works (supplementary performance). The place of supplementary performance shall be the place where, at the time, the Goods are situated or where Services have to be performed according to the contract. Where Buyer chooses delivery of defect-free Goods, Buyer has to hand over the defective Goods to Seller.
- 7.3 Buyer may set a reasonable term for supplementary performance. If Seller unlawfully refuses supplementary performance or fails to carry out supplementary performance within the term or if supplementary performance fails, Buyer is entitled to rectify the defect, to have it rectified or to procure defect-free Goods from other sources and to claim compensation by Seller of the necessary expenses. If, in order to avert the imminent danger of considerable damage, it is impossible to give Seller the opportunity of supplementary performance, Buyer may rectify the defect, have it rectified or procure defect-free Goods from other sources at Seller's costs without previously setting a term for supplementary performance.
- 7.4 Seller has to bear all costs and expenses of supplementary performance and will reimburse such costs to Buyer, if incurred by Buyer. This especially includes costs for the examination of defects, transport, travel and working and material costs as well as costs for the disassembly of defect Goods and the assembly of defect-free Goods provided by way of supplementary performance.
- 7.5 Buyer's claims for defects become time-barred after twenty-four (24) months from the transfer of risk. In case statutory provisions provide for a longer limitation period, the respective statutory limitation period shall apply. If Seller delivers new Goods by way of supplementary performance, the limitation period for defect claims shall begin anew.

#### **§ 8 – Defects of Title**

- 8.1 Seller warrants that the Goods and Services and their contractually agreed use are free from any third-party rights. If the violation of third-party rights is claimed towards Seller, Seller will immediately inform Buyer in writing.
- 8.2 If a third party claims the violation of its rights to the Goods or because of their contractually agreed use towards Buyer, Seller will support Buyer in defending such claims and will join any proceedings on Buyer's side if a third-party notice is issued. In case the violation of third-party rights is based on a culpable breach of duty by Seller, Seller will, at its own costs, either obtain for Buyer all rights required for the contractually agreed use of the Goods or modify the Goods so that the Goods still conform with all specifications and the contractually agreed use is still possible without violating any third-party rights.
- 8.3 Further contractual or statutory claims of Buyer, especially for the compensation of damages caused by the violation of third-party rights, shall remain unaffected.
- 8.4 Before entering into an agreement, Seller will inform Buyer on existing or applied-for proprietary rights.

- 8.5 Buyer's claims for defects of title become time-barred after twenty-four (24) months from the statutory begin of the limitation period. In case statutory provisions provide for a longer limitation period, the respective statutory limitation period shall apply.

#### **§ 9 – Product and Producer Liability**

- 9.1 In case Buyer is held responsible on the basis of product or producer liability because of a defect of Buyer's product, Buyer may claim compensation from Seller, if and to the extent the damage caused to Buyer results from a defect in Seller's Goods or Services. Upon Buyer's request, Seller shall hold Buyer free and harmless from all claims raised by third parties. Costs incurred by Buyer because of such claims being raised shall be reimbursed by Seller.
- 9.2 If a recall of Buyer's product becomes necessary because of defects of Seller's Goods or Services, Buyer will timely inform Seller and give Seller the opportunity to take part in the execution of the product recall, unless a participation of Seller is not possible due to the urgency of the required measures being taken. Seller has to bear the costs of the product recall, if and to the extent the recall is based on a defect of Seller's Goods or Services.
- 9.3 Seller is obliged to maintain a product liability insurance, which covers the risk of defects of Seller's Goods and Services according to the provisions of the respective agreement and these STP and provides for a limit of at least 3,000,000 EUR per insured event. Upon Buyer's request, Seller will provide proof of such insurance coverage.

#### **§ 10 – Custom-made Goods**

- 10.1 If Buyer provides Seller with drawings, specifications, samples, tools, templates, models or instructions (hereinafter jointly "**Materials**"), Buyer remains the sole owner of the Materials.
- 10.2 Seller shall use the Materials exclusively for the fulfilment of its obligations under the respective agreement with Buyer. Apart from that, Seller has no right to make use of or exploit the Materials. Especially, Seller is not entitled to reproduce the Materials or to disclose them to third parties, but shall be obliged to keep them secret and to protect them from unauthorized access. Seller shall keep the Materials safe and separated, mark them as Buyer's property and return them to Buyer after completion of Seller's obligations or at any time upon Buyer's request. Seller has no right of retention to the Materials.
- 10.3 Goods produced for Buyer with or based on the Materials may only be sold and delivered to Buyer and may not be left with or made available to third parties.

#### **§ 11 – Further Obligations of Seller**

- 11.1 Seller may engage subcontractors with the fulfilment of its obligations towards Buyer only with Buyer's prior consent.
- 11.2 Seller warrants that he will pay to its employees at least the statutory minimum wages and that he will comply with the requirements of the German Minimum Wages Act (*Mindestlohngesetz – MiLoG*). Seller also warrants compliance with the requirements of the Employee Secondment Act (*Arbeitnehmerentsendegesetz – AEntG*). If, with Buyer's approval, Seller instructs a subcontractor with the fulfilment of any of its obligations, Seller must ensure that its subcontractor also complies with the above requirements.
- 11.3 Seller shall hold Buyer free and harmless from all claims raised towards Buyer by third parties based on a culpable violation of Seller's obligations under § 11.2 and will reimburse to Buyer the necessary costs incurred for the defence against such claims.
- 11.4 **Penalty.** For every culpable violation of its obligations under § 11.2, Seller shall pay a contractual penalty of 5,000.00 EUR. Buyer's claim for compensation of higher actual damages shall not be excluded by this contractual penalty. In case the actual damages exceed an already forfeited contractual penalty, the penalty shall be credited against the damages.
- 11.5 For the production and delivery of Goods and the performance of Services, Seller shall use environmental-friendly materials and processes as far as possible. Upon Buyer's request, Seller has to provide proof thereof.

#### § 12 – Confidentiality

- 12.1 Buyer's trade and business secrets and all technical and commercial information on Buyer's business, goods and services that Seller has learned about in the framework or at the occasion of the business relationship with Buyer and which are either marked as confidential or have to be deemed confidential from their nature or from the circumstances under which they were disclosed to Seller (hereinafter "**Confidential Information**") shall be kept strictly confidential by Seller and shall not be made available to third parties and shall be protected from unlawful access with the same care and diligence that Seller applies to protect comparable information of its own, but at least with due care and diligence. This also applies to the content and the terms of agreements entered into with Buyer as well as to contract conclusion as such. Without Buyer's approval, Seller will not make any indications as to the business relationship with Buyer and will not use it for advertising purposes.
- 12.2 Seller will disclose Confidential Information only to employees or vicarious agents, who need to know Confidential Information for the production and delivery of Goods or the performance of Services. Before disclosing Confidential Information to them, Seller will instruct those employees or vicarious agents and impose on them the confidentiality obligations according to the provisions of this § 12.
- 12.3 The obligations under this § 12 will prevail beyond the termination of the business relationship.
- 12.4 Seller acknowledges that the obligation to pay damages would only inadequately compensate for a violation of the confidentiality obligation of this § 12, because such violation may cause Buyer irreparable damage. Apart from any other rights resulting from a violation of confidentiality, Buyer shall therefore be entitled to obtain an interim injunction against the existing, impending or continued violation of confidentiality obligations. In order to do so, it shall be sufficient that Buyer can demonstrate that the violation may result in damage without being required to prove actual damage.

#### § 13 – Force Majeure

- 13.1 Buyer and Seller will be released from their contractual obligations if and to the extent the fulfilment of their obligations becomes impossible or unacceptable due to circumstances of Force Majeure. Circumstances of Force Majeure are circumstances which are beyond the affected party's influence and which render the fulfilment of contractual obligations permanently or temporarily impossible. This includes natural catastrophes, war or warlike events, riots, terror, government measures, labour disputes and comparable circumstances.
- 13.2 Buyer and Seller are obliged to inform each other about the beginning, the probable duration and the cessation of the circumstances described in § 13.1 and about the extent to which the fulfilment of their contractual obligations is made impossible. The affected party has to provide evidence of such circumstances upon request.
- 13.3 If circumstances of Force Majeure persist for a period of more than six months, both parties have the right to withdraw from the contract affected by such circumstances of Force Majeure.

#### § 14 – General Provisions

- 14.1 **Set-Off and Right of Retention.** Seller may only offset claims of Buyer with undisputed counterclaims, with counterclaims that have been legally established as final and absolute or with counterclaims that result from the same contractual relationship. Likewise, Seller is only entitled to a right of retention if this right arises from the same contractual relationship or if it is based on undisputed claims or on claims that have been legally established as final and absolute.
- 14.2 **Assignment.** Seller may assign rights and obligations from the contractual relationship to third parties only with the prior approval of Buyer. § 354a of the German Commercial Code (HGB) remains unaffected.
- 14.3 **Applicable Law.** German law shall apply to the legal relationship and agreements of the parties. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 14.4 **Jurisdiction.** The courts at Buyer's registered place of business (Amtsgericht Hanau, Landgericht Hanau, Oberlandesgericht Frankfurt am Main) shall have jurisdiction for all disputes arising out of the contractual relationship. For suits filed by Buyer as a claimant, at Buyer's choice, the courts at Seller's registered place of business shall also have jurisdiction.
- 14.5 **Arbitration Proceedings.** For claims raised by Buyer, at Buyer's choice, an arbitration court of the German Institution for Arbitration (DIS) according to the DIS Arbitration Rules shall also be competent. The arbitration court shall consist of one arbitrator. The arbitration venue shall be Frankfurt/Main. The language used in the arbitration proceedings shall be English. If, at Buyer's choice, arbitration proceedings have been initiated, Buyer and Seller will accept the decision of the arbitration court as final and binding. The initiation of arbitration proceedings under § 14.5 shall not prevent the parties from obtaining an interim injunction or garnishment before a competent court or from invoking other forms of interim legal protection.