

1. General

- 1.1 These General Terms of Purchasing apply to all orders issued to suppliers by Smurfit Kappa Deutschland GmbH and its affiliated companies as defined in Section 18 of the German Companies Act [AktG] (hereinafter referred to as 'Smurfit Kappa'). All deviations, amendments, additions and conflicting terms of sale and supply require the written consent of Smurfit Kappa.
- 1.2 The supplier's standard contract terms are hereby expressly rejected in cases where they conflict with Smurfit Kappa's General Terms of Purchasing. Any inclusion of the supplier's standard contract terms will only be valid in cases where Smurfit Kappa has expressly recognised such terms as a rider to its own General Terms of Purchasing. Acceptance by Smurfit Kappa of the goods and/or services supplied does not constitute such recognition. This shall also apply in cases where the supplier formally states that goods and services are only supplied in accordance with his standard terms and nevertheless accepts and/or executes the order from Smurfit Kappa.

2. Orders and contracts

- 2.1 Orders are not binding on Smurfit Kappa unless issued in writing. All orders issued verbally or by telephone and all additions and/or amendments to existing orders shall not be valid unless confirmed in writing by Smurfit Kappa.
- 2.2 All suppliers must confirm their acceptance of an order in writing. The order confirmation must be issued within two weeks of the supplier's receipt of the order. Smurfit Kappa shall be entitled to cancel any order not yet received confirmed by the supplier without incurring any costs at the expense of Smurfit Kappa.
- 2.3 Calls for delivery of goods and services shall become binding on the supplier unless objected to by him within not more than two weeks from his receipt of the order.

3. Performance

- 3.1 The goods or services supplied must be capable of performing the agreed functions, must conform to the latest technical standards and comply with the specifications in Smurfit Kappa's orders and supporting documents.
- 3.2 The supplier undertakes to observe all relevant laws, decrees, official and technical regulations, contracting rules for award of public works contracts [VOB Verdingungsordnung für Bauleistungen] and also the accident prevention regulations issued by the competent employers' liability insurance association [berufsgenossenschaftliche Unfallverhütungsvorschriften], and to save Smurfit Kappa harmless against third-party claims alleging violation thereof.

4. Delivery

- 4.1 The supplier shall in all cases bear the cost and risks of despatch and delivery to the address stipulated by Smurfit Kappa, and also the cost and risks of returns of defective goods abandoned by Smurfit Kappa.
- 4.2 The risks for goods supplied against purchase contracts will pass to Smurfit Kappa at the time of confirmation of receipt of the goods at the address stipulated by Smurfit Kappa. In the case of contracts for work and services or work and materials, the risks will not pass to Smurfit Kappa until completion of the full contract and of the joint formal acceptance procedure, which is hereby deemed to be agreed in all cases.
- 4.3 Delivery shall be in accordance with the agreed conditions, whereby the mode of delivery must in all cases be agreed in advance with Smurfit Kappa.
- 4.4 Lead times and delivery dates stipulated by Smurfit Kappa and confirmed by the supplier are binding. Lead times commence on the date of the order. The supplier undertakes to inform Smurfit Kappa immediately of any actual or potential circumstances which could prevent him from complying with an agreed lead time.
- 4.5 All deliveries must be accompanied by a delivery note. The supplier must state the order number issued by Smurfit Kappa on all delivery notes and other documents relating to the despatch.
- 4.6 Unless otherwise expressly agreed with Smurfit Kappa, the supplier will bear the cost of packing the goods supplied and also of disposal of the packing materials. Arrangements for return of packing materials must be covered by a separate agreement.

5. Defects

- 5.1 Smurfit Kappa undertakes to file complaints relating to obvious defects or deficiencies in goods and services supplied with the supplier within 14 calendar days of the date of passing of risk. Complaints relating to latent defects or deficiencies must be filed with the supplier within 14 calendar days of their discovery. Defects or deficiencies which are only revealed by tests requiring removal of all or part of the packing materials, the use of chemical or physical methods of analysis, production tests etc. or by in situ tests of profiles, tools and other items of equipment are hereby deemed to be latent defects or deficiencies. The provisions of Section 377 of the German Commercial Code [HGB] shall also apply.

- 5.2 In cases where there are grounds for suspecting the existence of a defect or deficiency which can only be confirmed by further testing of the goods or services supplied, the complaint must be filed with the supplier within 14 calendar days of availability of the test results. The tests shall be performed by a publicly appointed and certified expert of the Chamber of Industry and Commerce [Industrie- und Handelskammer] responsible for the district in which the delivery address is located (Item 4.1). The cost of tests on goods and services which are suspected to be defective or deficient shall be borne by the supplier in cases where these tests confirm the presence of a defect or deficiency.
- 5.3 Smurfit Kappa shall be entitled to claim all remedies available to it by law in cases where defective or deficient goods or services are supplied. Should the supplier fail to honour a warranty obligation within a reasonable period set by Smurfit Kappa, Smurfit Kappa shall be entitled to remedy the defect or deficiency at the supplier's expense. In cases where Smurfit Kappa opts to withdraw from a contract, it shall be entitled to claim compensation or to reject all goods or services already supplied, even if some of these are serviceable.
- 5.4 Notwithstanding its rights under Item 5.3 above, Smurfit Kappa shall be entitled, subject to prior notification of the supplier, to have defects or deficiencies in goods or services received from that supplier remedied at the supplier's expense or, alternatively, to purchase replacement goods or services at the supplier's expense in cases where this is necessary in order to prevent or limit the duration of interruptions to Smurfit Kappa's business operations.
- 5.5 The relevant German statute of limitations shall apply to all claims filed by Smurfit Kappa relating to supply of defective or deficient goods or services.

6. Liability

- 6.1 The supplier shall be liable to compensate Smurfit Kappa for loss or damage incurred through the supply of defective or deficient goods or services (or defective or deficient parts of a delivery), through violation of legal or other official regulations or for any other reasons for which the supplier is legally responsible. Legal liability for compensation shall normally exist only in cases where the loss or damage is incurred through the supplier's fault. The relevant German statute of limitations shall apply to all claims for compensation based on supplier's liability filed by Smurfit Kappa.
- 6.2 Should the supplier fail to meet the agreed delivery date, Smurfit Kappa shall be entitled to claim an amount equivalent to 0.5% of the order value for each full week of delay in delivery up to a maximum of 5% of the order value as compensation for loss incurred by Smurfit Kappa through the delay without any obligation to furnish proof of such loss. The amount thereby revealed shall be deducted from relevant compensation claims filed by Smurfit Kappa. Smurfit Kappa shall be entitled to file claims for contractual penalties at any time up to final payment and is not obliged to make prior acceptance of goods or services subject to the proviso that payment of contractual penalties may be demanded subsequently.
- 6.3 Should goods obviously supplied for further processing to a final product marketed by Smurfit Kappa give rise to a defect or deficiency in that final product, the supplier shall be liable for the defects or deficiencies in or caused by the goods supplied in accordance with the following supplementary provisions.
- 6.4 Should a customer file claims relating to defects or deficiencies in the final product against either Smurfit Kappa or its (intermediate) customers, Smurfit Kappa shall be entitled to file claims for compensation against the supplier without granting him additional time to remedy the defect or deficiency.
- 6.5 Should Smurfit Kappa be under an obligation to make replacement deliveries of final products to its customers, the supplier shall be liable to pay compensation to Smurfit Kappa for the material, labour, transport and travelling costs incurred through these replacement deliveries.
- 6.6 Smurfit Kappa's claims for this type of breach of contract shall lapse 2 years from the date on which the relevant risk passed to Smurfit Kappa.
- 6.7 Should the supplier be responsible for a damage caused by defective product or should no-fault liability claims based on statutory regulations and not subject to the dispositive in relation to third parties be filed against Smurfit Kappa, the supplier shall save Smurfit Kappa harmless at first demand against third-party liability claims in cases where the cause lies within the supplier's physical and organisational control and the supplier himself is liable vis-à-vis third parties.

7. Third-party rights

- 7.1 The supplier guarantees that no intellectual property or other rights of third parties in the Federal Republic of Germany are being infringed by the goods or services supplied, their use in accordance with the terms of the contract or their further processing or resale by Smurfit Kappa, and will save Smurfit Kappa harmless against all claims relating to infringements or trespasses of this nature. The supplier's liability also extends to defensive measures against threatened claims or other action by third parties against Smurfit Kappa and also to all consequential losses

- thereby incurred by Smurfit Kappa, in particular losses caused by supply bottlenecks and disruption of production.
- 7.2 The supplier shall not be liable in cases where the goods are manufactured with production materials provided by or to other requirements specified by Smurfit Kappa and the infringement of intellectual property rights results from these requirements.
- 8. Provision of materials by Smurfit Kappa**
- 8.1 All materials and parts, including raw materials, consumables and supplies, provided by Smurfit Kappa to the supplier for processing remain the property of Smurfit Kappa. The supplier is liable for loss or damage to these items, is responsible for their safekeeping in compliance with the diligence of a prudent businessman and must inform Smurfit Kappa immediately if its property becomes or could become accessible to third parties. The supplier shall bear the costs of prosecution.
- 8.2 The supplier processes, combines, mixes or blends the materials thus provided on behalf of Smurfit Kappa. When materials provided by Smurfit Kappa are processed, combined, mixed or blended with other materials or articles not belonging to Smurfit Kappa, Smurfit Kappa acquires co-ownership of the resulting product in the proportion of the value of the materials provided by it to the value of the other materials at the time of processing. The supplier is responsible for the safekeeping of the sole or co-property for Smurfit Kappa. Item 8.1 above applies accordingly.
- 9. Supplier's retention of title**
- 9.1 Smurfit Kappa is prepared to recognise the supplier's retention of title to unprocessed goods delivered by him to Smurfit Kappa subject to the following provisions:
- 9.2 Smurfit Kappa is irrevocably entitled to dispose of the goods during its normal course of business. All deliveries made by the supplier are deemed to constitute a single delivery transaction. The retention of title serves as security for amounts outstanding in the supplier's favour.
- 9.3 Should the articles supplied to Smurfit Kappa be then combined by Smurfit Kappa to form a new unit which constitutes the final product, Smurfit Kappa will assign to the supplier a due proportion of co-ownership in that product for as long as the final product remains in Smurfit Kappa's ownership.
- 9.4 Should Smurfit Kappa resell the articles supplied in the normal course of business, it will assign to the supplier the claims thereby accruing against its customers, including all ancillary rights, up to an amount equivalent to the value of the reserved property until settlement in full of the supplier's outstanding claims from supply of goods and services to Smurfit Kappa. Should the reserved property be resold by Smurfit Kappa either in processed form or together with other goods not purchased from the supplier, the assignment of the claim accruing from the sale will also apply up to the value of the resold reserved property.
- 9.5 In cases where reasonable grounds can be shown, Smurfit Kappa will at the supplier's request provide the supplier with all information and documents required for the enforcement of his rights.
- 9.6 The supplier must release securities held by him if their total value exceeds the value of the secured claims by more than 10%.
- 10. Prices and payment terms**
- 10.1 All agreed prices are fixed prices. Price increases will not be valid unless acceptance is confirmed in writing by Smurfit Kappa. Unless otherwise agreed in writing, all prices shall be free buyer's address including all ancillary costs (in particular packing, customs duties, insurance, assembly etc.).
- 10.2 Value added tax at the legally applicable rate is not included in the price and must be shown separately.
- 10.3 Invoices on Smurfit Kappa must – as stipulated in the order – bear the order number stated on the order form. Smurfit Kappa is entitled to return invoices not bearing that order number to the supplier at the supplier's expense.
- 10.4 The supplier must enclose with the first invoice in any given calendar year a copy of a valid tax exemption certificate for deduction of tax for building work pursuant to Section 48b, Paragraph 1 (1st. sentence) of the German Income Tax Act [EStG] in cases where the German tax regulations relating to specific types of work require this.
- 10.5 Unless otherwise agreed in writing, Smurfit Kappa settles invoices either after deduction of 3% discount within 45 days from delivery date and receipt of invoice or net within 60 days of receipt of invoice. In cases where orders are delivered and accepted prior to the agreed delivery date, the term of payment runs from the originally agreed delivery date.
- 10.6 The supplier shall only be entitled to offset outstanding claims which are either undisputed or being *res judicata*. Smurfit Kappa is entitled to offset all its outstanding claims, including claims relating to cheques or bills receivable, against all the supplier's claims on Smurfit Kappa irrespective of the due date of the relevant claims.
- 11. Cancellation**
- 11.1 Smurfit Kappa is entitled to cancel a contract, either in whole or in part, or to postpone acceptance of deliveries for a reasonable period if it cannot make use of the items ordered or if their use would present significant economic difficulties for reasons of *force majeure*, strike, lockout, war, official intervention or other events causing substantial disruption of operations or sales.
- 11.2 Should either party to the contract suspend its payments, become insolvent, suffer substantial deterioration in its financial circumstances, itself file a petition in bankruptcy or have insolvency proceedings instituted against it, the other party shall be entitled to withdraw from the unperformed part of the contract.
- 11.3 Should a contract be cancelled for any reason whatsoever, Smurfit Kappa shall be entitled to return the goods already supplied at the supplier's expense and risk or to arrange for their storage by a third party.
- 12. Data protection**
- 12.1 The supplier acknowledges and hereby consents to the collection and storage by Smurfit Kappa of all data relating to the supplier arising out of the business relationship, recognising that Smurfit Kappa will make appropriate use of these data, such use including their transmission to third parties and their erasure.
- 12.2 Smurfit Kappa will ensure that the supplier's legitimate rights to data protection are not thereby prejudiced.
- 13. Secrecy**
- 13.1 Smurfit Kappa reserves all proprietary rights and copyrights to images, drawings and documents, none of which may be made accessible to third parties without Smurfit Kappa's written consent. All such items must be returned automatically after use. The secrecy obligation does not apply in cases where the documents contain production information which is common knowledge.
- 13.2 The parties to the contract undertake to treat all not generally known commercial and technical information coming to their knowledge as a result of the business relationship as a business secret. Drawings, models, stencils, samples and similar objects may not be handed over or otherwise made available to unauthorised third parties. Such items may only be copied or otherwise reproduced to the extent that is operationally necessary and permissible under copyright law.
- 13.3 The supplier must impose similar restrictions on any subcontractors.
- 14. Miscellaneous provisions**
- 14.1 All legal relationships between Smurfit Kappa and the supplier are governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980.
- 14.2 The place of performance for all obligations of the supplier arising from the business relationship is the place designated in the orders, requisitions and delivery notes as the place of delivery.
- 14.3 The place of jurisdiction for all disputes arising out of the buyer/seller relationship is the relevant registered office of Smurfit Kappa.
- 14.4 Declarations electronically communicated (email) are also classified as verbal or telephonic declarations; declarations communicated by telefax are also classified as written declarations.
- 14.5 Should any individual provisions of a contract between Smurfit Kappa and the supplier prove invalid, this shall not affect the validity of the remainder of the contract. Any gap arising through the deletion of an invalid provision shall be replaced by a provision fulfilling the commercial purpose of the invalid provision.