

## General Terms and Conditions (GTC)

### 1 In General

1.1 The Agreement is entered into upon receipt of a written confirmation by L. Klein AG (hereinafter “the Seller”) that it accepts the order (order confirmation).

The Seller’s offers are valid for 30 days (except in the case of an intermediate sale).

1.2 These GTC are binding if the offer or the order confirmation provide that they apply. Any different terms and conditions of the Buyer shall only be valid if they are expressly agreed to in writing by the Seller.

1.3 Except as otherwise provided in the order confirmation or these GTC, the Incoterms 2010 apply.

1.4 All of the agreements and legally relevant representations of the contract parties must be made in writing to be valid. Any representations in the form of a text transferred or recorded via electronic media, shall be deemed to be written, provided the contract parties specifically agree thereto.

1.5 If any provision of these GTC should be wholly or partly inoperable, the contract parties shall replace the provision with a new provision aimed at achieving a similar legal and economic outcome to the provision being replaced.

1.6 This version of the GTC is a translation. In the event of any inconsistencies, the German version shall prevail.

### 2 Volume of the deliveries

2.1 The deliveries of the Seller are exhaustively defined in the order confirmation, including any exhibits thereto. The Seller is authorised to make unilateral changes, which lead to improvements, providing this does not increase the price.

2.2 The delivery may deviate from the volume specified in the order within a standard commercial deviation of  $\pm 10\%$ .

### 3 Product information

3.1 Prospectuses and brochures, as well as the product information provided on the Seller’s website ([www.kleinmetals.swiss](http://www.kleinmetals.swiss)), are not binding, unless otherwise agreed. The Seller expressly declines any liability in connection with provisions made only on the basis of prospectuses, catalogues, or information on the website.

3.2 The product information published on the Seller’s website namely does not claim to be accurate and correct. It does not replace the professional advice provided by the Seller.

### 4 Prices

All of the prices – unless otherwise agreed – are in Swiss francs, net, FCA Biel, without packaging and any deductions. All of the ancillary costs, such as e.g. freight, insurance, export, transit, import, and other permits, as well as notarizations, are to be borne by the Buyer. Likewise, the Buyer must bear all kinds of taxes, duties, fees, customs duties, and the like, arising in connection with the agreement, or reimburse them to the Seller upon presentation of corresponding evidence, if it carries any obligation to pay these.

### 5 Payment terms

5.1 Payments must be made by the Buyer within 30 days from the date of the invoice without deduction of any discount, expenses, taxes, duties, charges, customs duties or any other deductions.

5.2 Payments must also be made on time if the transport or delivery of the deliverable items is delayed or made impossible, or the delivery is incomplete, for reasons arising with no responsibility on the part of the Seller.

5.3 If the Buyer fails to comply with the agreed payment time limit, he shall be required to pay default interest of 5% from the time of the agreed time limit, without a reminder. The compensation of any additional loss remains expressly reserved.

### 6 Delivery and delivery dates

6.1 The delivery date is the date on which the delivery leaves the warehouse in Biel. Departing from Article A4 of Incoterm clause FCA, the Seller is deemed to have complied with its delivery obligation upon complying with this time limit (delivery date).

6.2 The Seller shall endeavour to execute every order as promptly as possible. It however does not provide any warranty for compliance with an agreed delivery date.

6.3 The delivery date will be changed in particular:

- a) If the Seller does not timely receive the information it needs to carry out the agreement, or if the Buyer subsequently changes the information, thereby causing a delay in delivery;
- b) If obstacles arise, which the Seller is unable to prevent despite exercising due care, irrespective of whether they arise with respect to the Seller, to the Buyer, or to a third party. Such obstacles include, for example, epidemics, mobilisations, wars, riots, significant malfunctions, accidents, employment disputes, late or defective delivery of the necessary raw materials, semi-finished goods, production rejects of the Seller’s supplier, measures of the authorities, or omissions, and natural phenomena.

6.4 The Seller is not required in the cases indicated under Section 6.3 above to purchase the products elsewhere or to change the initially chosen transport routes.

6.5 Any liability of the Seller for late deliveries is expressly excluded. This limitation does not apply to the unlawful intent or gross negligence on the part of the Seller, but it also applies to the unlawful intent or gross negligence of auxiliaries.

### 7 Partial deliveries

At the Seller’s discretion, partial deliveries are also allowed. Every partial delivery is taken as an independent delivery. In the case of partial deliveries as well, differences in volume within the standard commercial deviation of  $\pm 10\%$  from the volume specified in the order are possible.

## **8 Transfer of benefits and risks**

Upon the departure of the delivery from the warehouse in Biel (delivery date), the benefits and risks shall pass to the Buyer.

## **9 Verification of the delivered items**

- 9.1 The Buyer must verify the delivered items thoroughly and immediately report any defects to the Seller in writing. If he fails to do so, the delivered items shall be deemed to be free from defects.
- 9.2 Any kinds of defects in the delivered items shall not confer any rights or claims to the Seller except those expressly provided for in Section 10 (Liability for defects).

## **10 Warranty period / liability for defects**

- 10.1 The warranty period is 12 months. It commences upon the handing over of the delivered item to the Seller (delivery date).
- 10.2 The onus is on the Buyer to clarify and secure the goods to ensure they are suitable for the intended processes and purpose. If the Buyer has any claims arising in connection with improper advice or other similar defaults, the Seller shall bear liability only with respect to the unlawful intent or gross negligence.
- 10.3 Promised qualities are only those, which are expressly designated in the order confirmation. Standard commercial deviations in volumes in a range of  $\pm 10\%$  shall not constitute a defect.
- 10.4 The Seller in particular does not warrant that the materials are without cracks; this applies also when materials "checked for cracks" are delivered.
- 10.5 In the case of verifiably defective materials or defective delivery, the Seller may, at its own discretion, either credit to the Buyer the equivalent invoiced value or replace the material.
- 10.6 Subject to the rights in this Section 10 above, the Buyer shall not have any claims in the case of deficient goods or deliveries, in particular it shall have no claims to compensation for lost earnings, or any other direct or indirect damages, or consequential damages.
- 10.7 In any event, any materials may only be returned in their original packaging, unprocessed, and labelled.

## **11 Non-performance, bad performance, and their consequences**

- 11.1 In all of the cases of bad performance or non-performance not expressly provided for in these terms and conditions, particularly if the Seller, without any reason, commences the deliveries so late that their timely execution is no longer possible, or if an improper execution of the contract, due to the fault of the Seller, is certainly to be expected, or if deliveries are made in breach of the contract due to the fault of the Seller, the Buyer is entitled, in respect of the relevant deliveries, to grant a time limit (additional time) to the Seller to remedy the breach, under threat of a withdrawal if it fails to perform. If this time limit (additional time) lapses, due to the fault of the Seller, without being used, the Buyer is entitled to withdraw from the agreement in respect of the

deliveries which have been made in breach thereof or in respect of which improper execution is to be expected, and claim pro rata any payments already made in respect thereof.

- 11.2 In such case, the provisions of Section 13 shall apply in respect of any damages claim of the Buyer and the exclusion of any further liability. The damages claim is limited to 10% of the contract price of the deliveries, in respect of which the withdrawal is being made.

## **12 Contract termination by the Seller**

If any unforeseeable events should considerably change the economic significance or the content of the deliveries, or significantly impact the suppliers' works, as well as in the case of the subsequent impossibility of performance, the agreement shall be amended accordingly. To the extent this is not economically reasonable, the Seller is entitled to terminate the agreement, or the affected parts of the agreement. If the Seller wishes to terminate the agreement, it must notify the Buyer immediately after learning of the significance of the event, and, namely, even if an extension of the delivery time limit was first agreed to. In the case of termination of the agreement, the Seller is entitled to payment of the deliveries already made. Damages claims of the Buyer on the ground of such termination are excluded.

## **13 Exclusion of additional liabilities of the Seller**

All cases of contractual breach, and the legal consequences thereof, and any claims of the Buyer, irrespective of the legal grounds, are provided for exclusively by these terms and conditions. In particular, any claims for compensation, a price reduction, a cancellation of agreement, or a withdrawal from the agreement, which are not expressly provided for, are excluded. In no event does the Buyer have any claim to compensation for losses that do not arise in respect of the delivery item itself, such as a production failure, loss of use, loss of orders, lost earnings, as well as other direct or indirect damage. This liability exclusion does not apply to the unlawful intent or gross negligence of the Seller, but it does apply to the unlawful intent or gross negligence of auxiliaries.

## **14 Jurisdiction and applicable law**

- 14.1 The courts at the place of the registered office of the Seller have exclusive jurisdiction with respect to the Buyer and the Seller.
- The Seller is, however, entitled to sue the Buyer at the place of its registered office.
- 14.2 The legal relationship is governed by substantive Swiss law, with the exclusion of the Vienna Sales Convention.