



Terms and Conditions of Purchase

Europe, United Kingdom and Middle East

Bahrain Atomisers International
Coating Center Castrop
Ecka Granules Austria GesmbH
Ecka Granules Germany
Fiven GmbH
Fiven Norge AS
Innobraze GmbH Fur Lotund Verschleisstechnik
Materiaux Ceramiques SA
Mepura Metallpulvergesellschaft mbH Ranshofen
Non Ferrum Kranj d.o.o.

These terms and conditions of purchase apply to all purchases made by or on behalf of each applicable above-listed affiliated company of Kymera International, LLC (as applicable, “we”, “us”, “our” or words of similar effect) for goods and services. As provided herein, acceptance of any purchase order from us by a selling party (“supplier”) is expressly conditioned upon supplier’s acceptance of these terms and conditions.

1. General Provisions

1.1 Our Terms and Conditions of Purchase apply exclusively; we do not acknowledge any general terms and conditions of trade of the supplier conflicting with or deviating from our Terms and Conditions of Purchase, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Purchase shall also be applicable if we accept and pay for the delivery of products and services of the supplier (hereinafter referred to as object of the contract), having knowledge of terms and conditions of the supplier conflicting with or deviating from our Terms and Conditions of Purchase.

1.2 Our Terms and Conditions of Purchase shall also apply to all future deliveries and services delivered to us by the supplier until our new Terms and Conditions of Purchase enter into effect.

2. Conclusion and Alteration of Contracts

2.1 Orders, contracts and calls for delivery as well as changes of and additions to them must be made in writing. Orders and calls for delivery can also be effected by remote data transmission or telefax.

2.2 Any oral agreements made before or upon the conclusion of the contract are subject to written confirmation of the purchasing department to become effective. Item 2.1, sentence 2 remains unaffected.

2.3 Any oral agreements made after the conclusion of the contract, in particular subsequent alterations of and additions to our Terms and Conditions of Purchase – including this written-form clause – as well as collateral agreements of any kind, are also subject to written confirmation of the purchasing department to become effective.



2.4 Estimates of costs shall be binding and not to be paid for, unless expressly otherwise agreed.

2.5 If the supplier does not accept an order within a period of two weeks from its receipt, we shall be entitled to cancel it. Calls for delivery shall become effective if the supplier does not object to them within a period of five working days from their receipt.

2.6 In case of orders for goods that contain hazardous and/or ecologically harmful substances, the supplier undertakes to indicate and offer equivalent alternative products, if any, containing substances that are less or not hazardous/ecologically harmful, without being asked. This does also apply with regard to the consumption of energy and natural resources as well as to the generation of waste and emissions in production, packaging and shipment.

2.7 We expect our suppliers to use management systems for a constant improvement of their performance as to quality, environmental protection and industrial health and safety, too. That is why we prefer suppliers with respective certified and validated systems.

3. Delivery

3.1 Any deviations from our contracts and orders shall only be permissible subject to our prior written approval.

3.2 Agreed dates and periods shall be binding. The date of receipt of the goods at our plant shall be decisive with regard to the observance of the date or period of delivery. In case delivery "free works" (DDU or DDP according to Incoterms 2000) is not agreed, the supplier must make the goods available in good time, taking into account the required loading and transport time to be co-ordinated with the forwarding agent.

3.3 If the supplier has assumed the installation or assembly and if not otherwise agreed, the supplier shall bear all required ancillary costs, such as travel expenses, provision of tools as well as daily allowance, except as otherwise provided.

3.4 In case of a failure to observe any agreed dates, the respective legal regulations shall be applicable. If the supplier can foresee any problems with regard to the production, provision of input material, observance of the delivery date or similar conditions that might prevent him from making the delivery in due time or in the agreed quality, the supplier must immediately notify our department that placed the order.

3.5 The unconditional acceptance of a delayed delivery or service shall not constitute a waiver of any claims for compensations we are entitled to due to the delay in delivery or service; this shall be valid until full payment of the remuneration for the respective delivery or service due from us.

3.6 Partial deliveries are generally inadmissible, unless we have expressly agreed to them or we can be reasonably expected to accept them.

3.7 With regard to numbers of pieces, weights and dimensions, the values determined by us in the incoming goods inspection shall be decisive, unless other proof is available.



3.8 With regard to any software that is part of the product delivery, including its documentation, we shall have, apart from the right of utilization to the extent permitted by law (§§ 69a ff. UrhG – Copyright Act), the right of utilization with the agreed performance characteristics to the extent required for a utilization of the product in accordance with the contract. We shall also be entitled to make a backup copy even without express agreement.

3.9 In case of goods approved on the basis of samples, the supplier is obliged to inform us immediately about any change in its manufacturing process or in the manufacturing process of purchased goods or components and to apply for a new approval.

3.10 All deliveries must include a delivery note in duplicate indicating our order number, our materials number, the quantity delivered and the date of our order. The accompanying documents of every delivery of hazardous materials and preparations must include the legally required safety data sheets as well as information sheets with special instructions re-garding storage and handling.

3.11 In case of deliveries of hazardous goods, the supplier shall be responsible for the compliance with all provisions and regulations in connection with transport law (e.g. correct marking, packaging and securing of the load) and shall be liable for resulting damage in case of a failure to observe these regulations.

3.12 The supplier is obliged to mark the goods in accordance with our order. In case of hazardous materials and preparations, the marking required by law is to be made in addition.

3.13 If the supplier does not submit at all or not in a proper form any test certificates (e.g. according to EN 10204) or attestations of conformity and CE markings required in the order, we reserve the right to reject the delivery at the supplier's expense and to withdraw from the contract.

4. Force Majeure

Force majeure, labour disputes, non-culpable operational breakdowns, unrest, measures taken by authorities and other inevitable events shall entitle us – without prejudice to our other rights -to withdraw completely or in part from the contract, as far as they are of a not inconsiderable duration and lead to a considerable reduction of our needs.

5. Shipping Advice and Invoice

The data indicated in our orders and calls for delivery shall be applicable. The invoice shall be made out in triplicate indicating the invoice number and other assignment characteristics and shall be sent to the respective address printed on it. It must not be included in the consignments.

6. Pricing and Passing of Risk

Unless otherwise agreed, the prices are understood free works customs cleared (DDP according to Incoterms 2000) including packaging, VAT not included. The supplier shall bear the material risk until acceptance by us or our agent at the place that the goods are to be delivered to according to the contract.

7. Terms of Payment



Unless otherwise agreed, invoices shall be settled either within 20 days with deduction of a discount of 3% or within 30 days without deduction from the due date of the remuneration account and the receipt of both the invoice and the goods or the rendering of the service. Payment shall be made subject to invoice checking. The payment shall neither constitute an acknowledgement of performance nor a waiver of claims based on material defects.

8. Claims Based on Defects and Recourse

8.1 Acceptance shall be made subject to an inspection as to faultlessness, in particular also as to correctness, completeness and suitability. We shall be entitled to examine the object of the contract as far and as soon as that is expedient in the regular course of business; any defects found will be notified by us immediately after their detection. We are only obliged to an examination and notification under § 377 HGB (Commercial Code) as far as defects are obvious. In that case, the notification of defect can still be given within a period of 10 working days from the receipt of the goods. For observing the period, the posting date shall be sufficient in case of a written notification of defect. In case of hidden defects, the supplier moreover waives the plea of late notification of defect.

8.2 Unless otherwise provided, there shall be applicable the legal regulations on material defects and defects of title.

8.3 We are generally entitled to choose the kind of subsequent performance.

8.4 If the supplier should fail to start to remove the defects immediately upon our respective request, we shall be entitled in urgent cases, in particular for averting imminent danger or avoiding major damage, to remove such defects ourselves or have them removed by a third party at the supplier's expense. Claims based on material defects shall become statute-barred after 2 years, unless the item was used, in accordance with its customary use, for a building and has caused its defectiveness. The limitation period for claims based on material defects begins upon delivery of the object of the contract (passing of risk).

8.5 In case of defects of title, the supplier shall moreover indemnify us against any possible claims of a third party. Defects of title are subject to a limitation period of 10 years.

8.6 For any parts of the delivery restored or repaired within the limitation period of our claims based on defects, the limitation period shall start anew at the point of time when the supplier has completely satisfied our claim for subsequent performance.

8.7 In case we incur any costs as a consequence of the defective delivery of the object of contract, in particular costs of transport, travelling, work, materials or costs of an incoming goods inspection exceeding the normal scope, such costs shall be borne by the supplier.

8.8 In case we take back any products manufactured and/or sold by us as a consequence of the defectiveness of the object of contract delivered by the supplier or if, due to that reason, our sales price was reduced or any other claims were asserted against us, we reserve to have recourse against the supplier. In the cases provided by law, our rights based on defects are not subject to fixing a period.



8.9 We are entitled to demand from the supplier compensation for the expenses we incurred with regard to our customer if the latter asserted against us claims for reimbursement of the expenses required for the purpose of subsequent performance, in particular costs of transport, travelling, work, materials.

8.10 Notwithstanding the provisions under item 8.5, the cases under items 8.8 and 8.9 shall become statute-barred not earlier than 2 month from the moment we have satisfied the claims asserted against us by our customers and not later than 5 years from the date of delivery by the supplier.

8.11 If a material defect is detected within a period of 6 months from the passing of risk, it shall be assumed that the defect already existed at the time of passing the risk, unless such assumption is incompatible with the nature of the item or of the defect.

9. Product Liability and Recall

In case we are held liable to recourse on the basis of product liability, the supplier shall be obliged to indemnify us against any such claims if and as far as the damage was caused by a defect in the object of contract delivered by the supplier. In cases of no-fault liability (strict liability), however, this shall only be applicable if any fault is attributable to the supplier. As far as the cause of damage lies in the supplier's sphere of responsibility, the supplier shall bear the burden of proof in this connection. In these cases, the supplier shall assume all costs and expenses, including the costs of prosecution, if any, and the costs of a recall action. As for the rest, the legal provisions shall be applicable.

10. Execution of Work

Any persons who, in performance of the contract, do any work at the factory premises must observe the provisions of the respective factory regulations. Liability for accidents happening to such persons at the factory premises is excluded, unless such accidents are caused by wilful or negligent breach of duty on part of our legal representatives or vicarious agents.

11. Materials Provided by Us

All substances, parts, containers and special packaging provided by us remain our property. They shall be exclusively used in accordance with the respective regulations. The processing of substances and the assembly of parts shall be done for us. It is understood that we shall be co-owners of the products manufactured with the use of our substances or parts in the ratio of the value of the materials provided to the total value of the complete product. Such products shall be stored for us by the supplier.

12. Documents and Secrecy

12.1 All business or technical information (including any features that can be gathered from any items, documents or software that is handed over and other knowledge or experience) must, as long as it is not provably known to the public, be kept secret from all third parties and shall only be made accessible to those persons in the own firm of the supplier who necessarily need to use them for the purpose of the delivery to be made to us and who have also been obliged to observe secrecy; they remain our exclusive property. Except for the purpose of deliveries to be made to us, such information must not be copied or



commercially used without our prior written consent. At our request, all information coming from us (including all copies or notes made, if applicable) and all items lent must be immediately and completely returned to us or destroyed. In case of a breach of duty, a contractual penalty of 25,000 Euro shall be payable per individual case. Any further claims for damages remain unaffected. We reserve all rights in such information (including copyrights and the right to apply for industrial property rights, such as patents, utility models, semiconductor protection, etc.). As far as we make them available to a third party, this reservation of right shall also apply for the benefit of such third party.

12.2 Any products that have been made according to documents created by us, such as drawings, models and the like, or according to our confidential information or with the help of our tools or copied tools must neither be used by the supplier itself nor be offered or supplied to a third party. The same applies accordingly to our print orders.

13. Place of Performance

The place of performance shall be the place where the goods are to be delivered to according to the contract.

14. Certificate of Exemption for Construction Services

Every supplier of construction services shall submit a valid certificate of exemption according to § 48b 1 EStG (Income Tax Act) to the user without being asked. The supplier of construction services shall be liable for its correctness and validity. If the certificate of exemption should be limited in time or expire during the performance of the contract, the supplier shall be obliged to submit a current certificate. Remaining below the minor-case limit does not relieve of the obligation to submit a certificate of exemption.

15. General Provisions

15.1 If any of the provisions of these Terms and Conditions and of any further agreements made should be or become invalid, this shall not affect the validity of the other provisions. The contracting parties are obliged to replace the invalid provision by a regulation that comes as close as possible to its economic purpose.

15.2 The place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationships based on these Terms and Conditions of Purchase shall be the town of Fürth (Bavaria). Moreover, we are entitled, at our option, to sue the supplier before the competent court at its seat or before the competent court at the place of performance.

15.3 The contractual relations are exclusively subject to German law, excluding the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).