

Franckh-KOSMOS Verlags-GmbH & Co. KG

General Terms and Purchase Conditions

- 1.1 All Purchase Orders (deliveries of goods and provision of services) of Franckh KOSMOS Publishing GmbH & Co. KG (following "KOSMOS"), are subject to the following General Terms and Purchase Conditions (GTPC) only. These GTPC apply, too, if KOSMOS in current business connections doesn't explicitly refer to these GTPC. KOSMOS objects to general terms and conditions of the supplier which deviate from these GTPC except KOSMOS gives its express prior written consent to the applicability of the supplier's general terms or conditions.
- 1.2 Additional agreements, changes and amendments to a purchase order or verbal agreements are only valid if confirmed by KOSMOS in writing.
- 1.3 These GTPC apply in their actual version also to future purchase orders (PO) of KOSMOS for goods and services with the same supplier in addition to any terms set forth on the front page of an individual PO or in any plans, specifications or other documents incorporated by reference (each, collectively, a "Purchase Order", or PO). The actual version of these GTPC is published on the internet under www.kosmos.de.

1. Order Confirmation or Applying Contracts for Procurements

- 2.1 All quotations have to comply with the Purchase Order of KOSMOS. The supplier explicitly has to refer to deviations from the Purchase Order. Quotations are not refundable. The call for a quotation isn't binding for KOSMOS.
- 2.2 KOSMOS Purchase Orders are only valid in written form with an authorized signature.
KOSMOS may request after written acceptance of the Purchase Order modifications of the Purchase Order with respect (i) to drafts, design, specifications; (ii) wrapping and shipment; (iii) place of inspection, delivery point and address of delivery, (iv) time of delivery. If such modifications lead to rising or reduction of costs and time each party may request for an appropriate adjustment of price and /or delivery time. Such requested adjustment will only come into effect if it will be received by KOSMOS no later than 30 days after the announced modification.
- 2.3 The Purchase Order shall be deemed accepted by Seller on the earlier of (a) shipment of Goods or rendering of Services ordered, in total or in part, or (b) within 15 days of issuance by KOSMOS, if there is no written notification to KOSMOS of non-acceptance. The Purchase Order shall be accepted by returning a legally signed Sales Confirmation announcing the binding date of delivery and price and all relevant dates of purchase.
- 2.4 If the Sales Confirmation differs from the Purchase Order KOSMOS will only be bound if those changes are explicitly marked or clearly identified as deviation and if there is a written confirmation by KOSMOS of those changes. The acceptance of Goods or Services or payments does not mean any consent.
- 2.5 If there exists a safety norm or certification for substances or preparations, the supplier is committed to automatically enclose those documents free of charge. A copy must be sent to the purchasing department of KOSMOS.
- 2.6 The supplier is committed to exam the drawings, plans and calculations for the execution of the order submitted by KOSMOS immediately. The supplier has to inform KOSMOS without delay if documents for the execution of the purchase are missing or the supplier has doubts against their correctness.
- 2.7 Drawings, plans, calculations and other documents, which are entrusted by KOSMOS to the suppliers care, remain property of KOSMOS. These documents as well as other drawings, plans and calculations, samples etc. which are produced by the supplier according to instruction of KOSMOS may not be used for other purposes, duplicated or given access to third parties. Drawings, plans, calculations, models, samples etc. must be given back to KOSMOS after carrying out the order and in case this doesn't happen given back to KOSMOS without demand or any costs.
- 2.8 Drawings and other documents requested by KOSMOS or submitted by the supplier before conclusion of a contract which contain a description of the object of the purchase or the service with respect to its nature, quality and usability are content of the agreement if not otherwise agreed upon.
- 2.9 With beginning of the production the supplier is committed to send two samples to KOSMOS as quick as possible.
- 2.10 KOSMOS is entitled to transfer all rights and obligations of the contract with the supplier to another company. Such transfer doesn't cause any rights to the supplier nor entitle him to cancel the purchase order.
In case of bankruptcy of the supplier or a change in the supplier's ownership structure, KOSMOS is entitled, wholly or partially, to withdraw from its agreements or Purchase Orders. The supplier is obligated to inform KOSMOS of such circumstances immediately.

2. Compliance with Legal Requirements

- 3.1 The supply of materials and their packaging must comply with the relevant European and American laws applicable for these materials and for toys at the point of delivery. Enacted European legislation: DIRECTIVE 2009/48/EC (Toy Safety Directive (TSD)) with all amendments, EN71 series (all applicable parts), EN62115, Regulation (EC) No 1907/2006 (REACH), DIRECTIVE 2011/65/EU (RoHS II) with previous version DIRECTIVE 2002/95/EU (RoHS I), Directive 2014/30/EU (EMV) with previous version DIRECTIVE 2004/108/EC, DIRECTIVE 2006/66/EC (Battery Directive) with all applicable standards.
Enacted American legislation: U.S. Consumer Product Safety Commission (CPSC) safety standards, CPSIA, ASTM, Chemicals legislation etc.
The delivered products shall comply with the essential safety requirements and applicable legislation during their foreseeable and normal period of use. The seller shall not use any forbidden substances during production process and will take care that no forbidden substances (e.g. Chromium VI) can be formed in the product during the period of use.
- 3.2 The materials/packaging must not be radioactive or contain substances, which are forbidden or regulated in toys (e.g. SVHC, CMR, forbidden heavy metals, Phthalates, Azo colourants / Azodyes, allergenic substances, e.g. Nickel, allergenic fragrances or preservatives, N-Nitrosamines and N-Nitrosatable substances, Benzene, Cadmium, PAH). The current version of the Chemicals legislation (e.g. REACH) shall be used. For toys containing electric components in addition the requirements of RoHS, EMC or Battery Directive, apply if applicable.

- 3.3 The supplied materials, toys and packaging must be designed, manufactured and delivered in such a way as to meet hygiene and cleanliness requirements in order to avoid any risk of infection, sickness or contamination.
- 3.4 The supplier shall establish the technical documentation of his product and if requested provide to KOSMOS or to the market surveillance authorities of the country (ies) of sale. The technical documentation of the supplier shall for electrical or electronic products, wherever applicable, contain the following elements: a general description of the device, conceptual design and manufacturing drawings and schemes of components/sub-assemblies, circuits with the needed descriptions and explanations to understand the function of the device, test reports, assessment of the risk(s) etc. and other documents which may requested from the market surveillance authorities.
- 3.5 For toys the technical documentation has to meet with the requests in *ANNEX IV* of the *DIRECTIVE 2009/48/EC* (Toy Safety Directive (TSD)). The documentation shall contain the addresses of the places of manufacture and storage, the carried out safety assessment(s), test reports, a detailed description of the design and manufacture, including a list of components/substances and materials (BOM: bill of materials and BOS: bill of substances) used in the toy as well as the material safety data sheets (MSDS) on chemicals used. This BOS shall give the percentage/content of each included substance and their MSDS or the MSDS of the prepared mixture according to the legislation on chemicals (EU (REACH Directive) or US (OSHA Regulation)). All requested documents, e.g. technical documents, MSDS, test reports, Declarations of Conformity etc. shall be written in German or at least, in English language.
- 3.6 All documentation shall be kept by the supplier for a period of 10 years after the end of production.
- 3.7 In case of violation, the seller acknowledges the obligation to pay damages. With the delivery of Services and Goods those conditions are accepted.

3. Price

Prices in Purchase Orders of KOSMOS or in offers of suppliers are fixed prices. Increasing of prices referring to material or commodity, wage or salary, costs of production and transport as well as other elements of prices between conclusion of the agreement and carrying out of delivery do not change the agreed price.

4. Delivery

- 5.1 All requests of KOSMOS in terms of transport, forwarding and shipping instructions must be followed absolutely. If no particular mode of transport is defined goods should be dispatched at the lowest costs. In case of offending those requests the supplier is liable to any consequences and costs. Additional costs needed to assure compliance with the delivery requirements of any necessary expedited shipment have to be covered by the supplier, if these are not caused by KOSMOS. Incomplete or missing agreed payment instruments (e.g. credentials), substandard shipping documents, especially in the absence of confirmations of order data, entitle KOSMOS to refuse the goods on the supplier's expense and risk.
- 5.2 All delivery dates are fixed dates. The goods must be forwarded by the dates agreed to the ultimate delivery party. For FOB deliveries the date "Date of Shipment" (ETD = expected time of delivery) shall prevail.
- 5.3 Short shipments will not be accepted unless approved by KOSMOS in written form. An over-supply up to 2% is allowed.
- 5.4 If goods or services are delivered at a time other than agreed upon KOSMOS may reject those goods and services. In these cases KOSMOS isn't obliged to take care of those goods and services. It doesn't matter whether the goods are delivered by car, ship, aircraft or train.
- 5.5 All shipment is made in the account and the risk of the supplier. The supplier has to take out an insurance for the goods.
- 5.6 The delivery of the goods to the receiving department of the respective delivery address has to be arranged according to the delivery times and conditions of the delivery address. All shipments must include a delivery note with detailed table of contents, the individual net weight and the complete order number of the KOSMOS order.
- 5.7 The passing of risk to KOSMOS takes place with effect from the moment of delivery to the receiving department of the delivery address.

5. Warranty

- 6.1 The supplier is responsible that the delivery or the service at the time when the risk is passing to KOSMOS has no defects which abolish or decrease the value or the suitability for the usual or agreed use. The supplier warrants that the delivery complies with the agreed and warranted quality and composition. Any limitation of liability is excluded. The supplier warrants especially that all goods which are covered by these GTPC comply with the respective drafts, designs and specifications and are free of defects in material and manufacturing. If not otherwise explicitly agreed upon the supplier warrants that the goods are new, not used, not recycled, customary in commerce and in any respect fit for service with respect to the order of KOSMOS. The supplier agrees to indemnify and hold harmless KOSMOS against any and all claims of third parties (damages, losses, liabilities, costs and expenses) arising from a violation of these responsibilities and warranties by the supplier.
- 6.2 The supplier shall indemnify and hold harmless KOSMOS due to any and all claims, arising from a use of the delivered goods in compliance with the agreement from a violation of intellectual property rights as well as from a violation of applied property rights, if these violations are not caused by KOSMOS.
- 6.3 The delivered goods are accepted by KOSMOS with the reservation to examine them in the ordinary course of business and as far as the delivered goods are free of defects, especially whether they comply with the Purchase Order and are complete. KOSMOS will give notice promptly of any defect. The supplier waives any objection referring to a late notice.
- 6.4 KOSMOS has the right to inspect the goods delivered according to AQL. The goods will be tested according to AQL 1.0 for major defects and AQL 2.5 for minor errors. Critical defects will not be accepted (for example: Out of 10.000 units a sample size of 200 units will be tested. Maximum of 5 defects or 10 minor defects will be accepted).
- 6.5 If the delivered goods or services are not consistent with the warranted or agreed specifications or is the product otherwise defective (see 6.4) KOSMOS is entitled at his own discretion and on the suppliers expense to either call for a delivery of a zero-defect product or to give the supplier the opportunity to carry out any additional work necessary to ensure that the agreement is fulfilled i.e. in prompt repair of the defective goods. If repair is demanded and without success after a reasonable period, KOSMOS is entitled to terminate the agreement in whole or in part or to reduce the purchasing price, or to require further compensations of consequential damages. After failed repair KOSMOS is entitled to remedy defects by itself. The supplier shall indemnify and hold KOSMOS harmless from and against any and all damages, losses, demands, costs and expenses including wasted expenditure arising from the faulty delivery if and to the extent that such claims are attributable to a defect in the goods delivered/manufactured or the service provided by the supplier. Costs for transport, removing and installation resulting from delivery of a zero-defect product or repair of the delivered goods shall be borne by the supplier.

- 6.6 If measurements are necessary to avoid further damage and losses (i.e. a callback campaign) the supplier has to cover the associated costs.
- 6.7 Payment does not constitute any acknowledgement that the corresponding delivery or services were provided in accordance with the agreement, nor that they are free of defects, nor that they meet with the specifications of the agreed quality nor that they are complete, nor that KOSMOS waives its rights with respect to the faulty delivery or service.

6. Termination, claims for damage, contractual penalties, force majeure

- 7.1 In the event of delay KOSMOS is entitled to give the supplier an additional reasonable period to fulfill the agreement. After expiring of this period without result KOSMOS is entitled to terminate the agreement and/or ask for compensation for losses, costs and expenses. All rights of KOSMOS with respect to the delay remain unaffected.
- 7.2 If the supplier exceeds the additional period without result KOSMOS may claim a contractual penalty at the rate of 0.1% of the net aggregate order value for every day exceeding the additional period but no more than 5% of the net aggregate order value. Claims for compensation which exceed this amount remain unaffected.
- 7.3 Force majeure, labor disputes, strike and lockout as well as other unforeseeable or inevitable events if they are not temporary release the parties of their obligations to fulfill the agreement. The supplier shall give KOSMOS notice promptly no later than 24 hours after knowledge about force majeure, labor disputes, strike and lockout and other unforeseeable or inevitable events which lead to a continual or a temporary obstacle to fulfill the agreement. The supplier has to indemnify and hold harmless KOSMOS from and against any and all damages, losses, demands, costs and expenses which arise from the culpable violation of this obligation.

7. Ownership

- 8.1. If the supplier reserves the ownership of any or all delivered goods the ownership shall be transferred to KOSMOS with the payment.
- 8.2. In case of delay of payment of KOSMOS the supplier is not entitled to demand the return of the delivered goods with his reserved ownership or to take them away if he doesn't terminate the agreement in whole.

8. Payment

- 9.1 Invoices have to be sent to KOSMOS double in original separated from the delivery and shall detail the order number, the invoice number, the quantity, the price and other classifications. For deliveries outside the customs district of the Common Market the supplier shall add to the delivery a copy of the invoice or a pro-forma-invoice.
- 9.2 Invoices without the details set forth in 9.1 or with a wrong named company or a wrong company address cannot be handled. The period allowed for payment will begin with the incoming of a correct invoice.
- 9.3 Payment will be carried out according to the individual agreed payment conditions. In case of credit transfer the payment is on time if the transfer order of KOSMOS is received by the bank before expiring of the deadline for the payment. KOSMOS isn't responsible for any delay resulting of the banks which are involved in the payment. The payment is to be effected under the reservation of an examination of the invoice.
- 9.4 There shall be no interest payable from the due date.
- 9.5 KOSMOS has the right of setoff and the rights of retention as well as the exception of the unfulfilled agreement within the statutory scope. KOSMOS particularly is entitled to withhold payments due for so long as KOSMOS has claims against the supplier from incomplete or defective deliveries and/or services.
- 9.6 The supplier has a setoff or right of retention only when his counterclaims are incontestably or final.
- 9.7 The assignment of claims against KOSMOS from the supplier to third parties will come effective only with written consent of KOSMOS.

9. Product liability

If a product liability claim should be asserted or entered against KOSMOS the supplier is obliged KOSMOS to indemnify and hold harmless against any and all claims as far as the damage is caused by a defect of the delivery of the supplier. In case of strict liability the foregoing shall apply only if the supplier is at fault. If the cause of the loss or damage is within the responsibility of the supplier the burden of proof shall rest on the supplier.

10. Copyright Intellectual Property

All rights on products, ideas and concepts which are relevant for manufacturing of KOSMOS' products and to which the supplier gets access, remain with KOSMOS. The foregoing applies especially on product concepts as well as innovations about which the supplier learns during the manufacturing and the development of products.

The supplier shall indemnify, defend and hold KOSMOS harmless against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising in connection with any actual or contractual intellectual property right of any third party with respect to the goods and services provided under the purchasing order.

11. Confidentiality

The supplier shall preserve in strict confidence all confidential, sensitive or proprietary information of KOSMOS received from KOSMOS ("Confidential Information"), whether or not marked "Proprietary" or "Confidential," and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care).

Confidential Information shall not include information that the supplier can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by Seller without reference to Confidential Information. Seller will not disclose or cause to be disclosed at any time any Confidential Information obtained from KOSMOS, or use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the Services required by the Purchase Order.

The supplier represents warrants and covenants that it shall maintain physical, electronic and procedural safeguards designed to insure the security, integrity and confidentiality of all Confidential Information, protect against any anticipated threats or hazards to the security, integrity or confidentiality of Confidential Information, and protect against unauthorized access to or use or disclosure of Confidential Information.

12. Duplication and use of KOSMOS' data

Except for articles or designs incorporated in the goods called for hereunder which originated with supplier and which are completely separated from such goods, supplier shall not, either during the performance of this order or thereafter

- (I) reproduce or manufacture any goods called for hereunder or any part thereof for any third parties utilizing any designs, drawings or other technical data or proprietary information belonging to or supplied by on behalf of KOSMOS except in the performance of the orders for KOSMOS or
- (II) disclose any designs, drawings or other technical data or proprietary information without first obtaining KOSMOS' written consent. Upon KOSMOS' request all such designs, drawings or other technical data or proprietary information and any copies thereof shall be returned to KOSMOS. Where KOSMOS designs, drawings or other technical data or proprietary information are furnished to subcontractors for procurement of supplies by supplier for use in the performance of KOSMOS' orders with KOSMOS' written consent, supplier shall insert the substance of this provision in its orders with its subcontractor.

13. Provisional materials

All materials supplied by KOSMOS remain the property with the proviso KOSMOS to be considered as owner of the materials and every object produced with it. The materials and articles are to be stored under special labelling for KOSMOS and need to be insured against fire, theft and other risks.

14. Long-term Sellers declaration or Certificate of Origin (EG Nr. 1207/2001 or Form A)

KOSMOS will get automatically all documentary evidence of origin which has to be valid for 1 year.

15. Code of Conduct

- 16.1 The Supplier grants that any production have not been performed in exploitative manner, under adverse health, using child or forced labor and that this is also valid for all necessary subcontractors.
- 16.2 During production, the supplier shall adhere to all applicable statutory provisions and sets of rules concerning health and safety at work and environmental protection. Notwithstanding any other obligations, the supplier shall comply with the provisions of the KOSMOS' Code of Conduct we will gladly send you on request. Particularly, all local legal regulations regarding working conditions, working hours and financial remuneration/ compensation must be respected by seller and/or lower tier subcontractors.

16. Guidelines for delivery to our distribution centers

For all deliveries to our distribution centers, the general guideline of the respective location applies. Currently, these are the delivery terms of VVA. The guidelines for delivery of components, parts and raw material are summarized in the leaflet „Anlieferung“. Upon delivery to the VVA, the general packing guidelines of VVA apply. In case of direct delivery to our customers, our customer's specifications apply and have to be followed by the Seller unless explicitly mentioned otherwise.

17. Severability clause

If any provision of the Purchase Order is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this agreement for each party remain valid, binding, and enforceable.

18. Choice of Law and Place of Jurisdiction

All matters arising under or related to the Purchase Order shall be construed and enforced in accordance with German law, without regard to conflicts of law rules. Place of jurisdiction is Stuttgart, Germany.

19. Final Provisions

This terms and conditions apply if the Purchase Order is accepted by the supplier.

Stuttgart, 16-September 2015