

**Terms and Conditions of Purchase**  
**of**  
**Alfred Kärcher SE & Co. KG**  
**Alfred-Kärcher-Straße 28-40, 71364 Winnenden, Germany**

**as of May 2019**

**I. Validity**

1. These Terms and Conditions of Purchase (hereinafter "Terms and Conditions of Purchase") apply to all agreements between Alfred-Kärcher SE & Co. KG and the respective ordering companies of the KÄRCHER Group (hereinafter "We") with companies (hereinafter "Supplier") concerning the delivery or manufacture of production material, non-production material and other items and delivery items as well as the provision of services (together: "Goods") by the Supplier. The Terms and Conditions of Purchase do not apply to consumers.
2. Our Terms and Conditions of Purchase (below) apply exclusively. We do not accept any terms and conditions of the Supplier unless We have expressly consented to them in writing. Our Terms and Conditions of Purchase apply even if We accept deliveries without reservation despite being aware of conflicting or deviating terms and conditions of the Supplier.
3. Deviations from and additions to these Terms and Conditions of Purchase are only valid with our express written confirmation and apply only to the respective agreement for which they were agreed.
4. The version of our Terms and Conditions of Purchase which applies is the version which is valid at the time of our order and constitutes a framework agreement which also applies to any later contracts within the meaning of subsection I. 1. with the same Supplier without it being necessary for us to refer to them again.

**II. Conclusion of contract**

Our orders are only binding if We have placed them in writing, by email or by fax. Verbal orders or verbal orders by phone as well as any additions or changes to an order are only valid if We confirm them in writing, by email or by fax.

**III. Prices**

The agreed prices are fixed prices inclusive of all incidental costs, (e.g. proper packaging, transport, insurance of the Goods); in case of doubt, the price includes value added tax.

**IV. Supplier's obligations**

1. Delivery periods shall run from the date of our order.
2. Preparation of offers and price estimates and similar preparatory work by the Supplier are free of charge for us unless otherwise agreed in writing.
3. If there is a delay in delivery by the Supplier, We are entitled to demand 0.5% of the full price calculated on the basis of the order (including VAT) for each commenced week of default as

liquidated damages for losses caused by the delay up to a total of 5% of the order value (including VAT), without any proof of actual damage being required from us. The right of the Supplier to provide proof that no damage or that the damage incurred was substantially lower remains unaffected. Any other rights and claims to which We are entitled remain unaffected the liquidated damages for losses caused by the delay shall be set off against any claims for damages resulting from the delay.

4. If it is not possible for the Supplier to fulfil its contractual obligations on time or if the Supplier is unable to deliver in the agreed quality, it shall notify us without undue delay in writing, stating the reasons, and specify the expected delivery date and the deliverable quality. The Supplier shall compensate any damage resulting from the breach of this obligation. Our other rights and claims due to any delay in delivery remain unaffected.
5. If the ordered Goods have not yet been produced, We may demand changes to the construction and the design. The parties shall agree on an adjustment of the Supplier's remuneration should these changes lead to extra or reduced costs. If the parties are unable to come to an agreement, a third party-expert shall determine the adjusted remuneration. If the parties fail to agree on the person of the expert, the president of the Chamber of Commerce and Industry for the Stuttgart region shall make a decision. The parties shall each bear half of the expert's costs.
6. The Supplier shall undertake to comply with the Kärcher code of conduct (<https://s1.kaercher-media.com/media/file/56863/kaercher-code-of-conduct.pdf>) and the generally valid principles of the UN Global Compact (<https://www.unglobalcompact.org/>). The Supplier shall in particular ensure that children and adolescents are employed only in accordance with the rules of the International Labour Organization (ILO), the United Nations (UN) and national law. The Supplier shall impose this obligation on its suppliers. In the event of contradictions between the Kärcher Code of Conduct and the principles of the UN Global Compact the Supplier shall always give the principles of the UN Global Compact priority.
7. The Supplier shall also undertake to institute all the necessary measures on time so that the parts and/or devices supplied to us satisfy the requirements of the EU directives on waste electrical and electronic equipment (WEEE) and on banned substances (currently applicable version of RoHS 2, Directive 2011/65/EU) as well as the corresponding national provisions in the Member States of the European Union. In particular, this applies to the labelling of devices, the avoidance of banned substances and the provision of information for disposal companies. If changes need to be made to the parts and/or devices to be supplied in order to comply with the said legal standards, the Supplier is obliged to obtain our written consent before making these changes. The Supplier shall also observe Kärcher standard KN 050.032 "Constituent substances", which We provide as a download online (<https://www.kaercher.com/int/inside-kaercher/company/supplier-area/download-area.html>)).
8. The Supplier undertakes to comply with all the statutory requirements resulting from the EU regulations concerning protection against chemicals (REACH) (in particular, the registration, notification and authorisation duties). The Supplier shall provide us with sufficient information as required pursuant to Art. 33 of Directive 1907/2006 EC (REACH Directive) for the safe use of the products pursuant to Art. 57 of the REACH Directive. If, as a consequence of REACH, any changes should ensue in the availability or use in accordance with the designated purpose of materials, components, groups of components, finished products or packaging or if action is required by us, the Supplier shall notify us hereof without undue delay. The Supplier shall also pass on the duties set out in this subsection to its suppliers. Should the Supplier be responsible for any damage resulting from the breach of one of the duties set out in this subsection, it is obliged to in this respect indemnify us against claims for damages by third parties upon initial request and to compensate us for any damage We have incurred. The materials, components,

groups of components, finished products or packaging shall not contain any substances of very high concern (SVHC) listed in the current REACH candidate list. If SVHC should be present in a concentration higher than 0.1%, the Supplier shall notify us without undue delay.

9. The Supplier shall issue and send us a long-term supplier's declaration which conforms with the official sample document pursuant to applicable EU provisions on preferential trade. Insofar as this has not yet occurred, the first long-term supplier's declaration must be signed and submitted to us within 14 days of the agreement being concluded. No later than two weeks before expiry of the respective period of validity of a long-term supplier's declaration the Supplier shall provide us with a new long-term supplier's declaration without awaiting a special request to do so. If the Supplier's manufacturing site for the Goods is not located in an EU Member State, the Supplier is required to import the corresponding contractual items into the EU with an EUR.1 movement certificate issued by the competent customs authority or with a declaration of origin. The Supplier must inform us in writing without undue delay and without awaiting a special request to do so if the information in the long-term supplier's declaration, the EUR.1 movement certificate or the declaration of origin is no longer correct for the products. If We suffer damage (including personnel costs) from failure to perform these obligations or false information from the Supplier, the Supplier must reimburse us for this damage. This shall not apply if the Supplier is not responsible for such failure to perform or the false information.

## **V. Shipping**

1. Shipment of the Goods shall take place DAP (INCOTERMS 2010) to the place stipulated in the order. Any returns of Goods for reasons within the Supplier's scope of responsibility shall be at the Supplier's expense and risk.
2. We are entitled to refuse to accept shipments if proper shipping documents are not submitted to us on the day of delivery, especially if our order descriptions and numbers are not listed or not listed in full, without being in default of acceptance as a result. Costs incurred as a result of the refusal to accept shall be borne by the Supplier. The shipping documents shall include a detailed delivery note with an exact description of the department that issued the order and the date of the order. In the case of express and urgent shipments as well as postal parcels a delivery note in a sealed envelope shall be enclosed with the Goods.
3. Packaging of the Goods shall be carried out at the Supplier's expense. If, as an exception, We have agreed to bear the packaging costs, We shall bear them only in the amount of the cost price of the material.

## **VI. Invoicing, payment**

1. For each delivery an invoice shall be submitted separately from the shipment of Goods to our invoice verification department. The wording of the invoice must correspond to our order descriptions and it must contain our order numbers. The exact description of the department that issued the order and the date of the order must be quoted.
2. We make payments at our discretion after 14 days with the deduction of 3% cash discount or after 30 days without deduction.
3. The terms of payment set out in subsection VI.2 commence upon receipt of the proper shipping documents (V.2.) or a proper verifiable invoice (VI. 1.) or upon delivery of the proper Goods, depending on which date is later.

4. Incorrect shipping documents or invoices as well as defective deliveries delay the course of the term of payment and may be returned by us at any time. In these cases, the term of payment shall not start to run until We have completed invoice verification or until receipt of the proper shipping documents or invoices or proper performance of the contract. The Supplier shall take into account this commencement of the payment period in its evidence of our failure to pay.
5. If the contract becomes void or is terminated or reversed for whatever reason, interest in accordance with the statutory provisions shall be paid on the payments We have affected regardless of any further claims. Foreign Suppliers must - irrespective of any changes in the exchange rate that have occurred in the meantime - repay the Euro amount paid by us plus the statutory interest claims in Euros.

#### **VII. Right of retention, offsetting, assignment**

1. The assertion of a right of retention against our claims and offsetting against counterclaims is only permitted if the counterclaims on which the right of retention is based, or the offset counterclaims are undisputed or have been declared final and absolute by a competent court.
2. The Supplier may only assign its rights arising from this contract with our written consent; this does not apply to monetary claims arising from a commercial transaction on both sides.

#### **VIII. Warranty, liability**

1. The Goods must provide the agreed performance and in terms of design and material conform to the latest state of technology, comply with the applicable accident prevention regulations and correspond to our order documents and the agreed quality. Furthermore, the Goods must be suitable for the use designated in the order or order confirmation or otherwise for the usual application and have a quality that is customary for items of the same kind and which We can expect according to the type of Goods.
2. The Supplier shall be liable for ensuring that no rights of third parties (especially patents, utility models, design patents, copyrights or other rights) are infringed in connection with its delivery; this does not apply if the Supplier is not responsible for the infringement of the rights of a third party. This liability applies to all Member States of the European Union, other states party to the Agreement on the European Economic Area as well as Switzerland and the USA. For our part, We are not obliged to carry out investigations to ascertain whether any industrial property rights of third parties exist. If claims are asserted against us by a third party due to the infringement of such rights, for which the Supplier is responsible, the Supplier shall be obliged, on first written request, to indemnify us against all claims by third parties and to reimburse us for all resulting damage, costs and expenditure; this includes fending off impending claims and actions of third parties. The liability of the Supplier also includes all damage, especially consequential damage, resulting from supply shortages and production disruptions and the reasonable costs of a necessary legal defence. This obligation of the Supplier shall not apply in as far as the right or claim of the third party results from the fact that the Supplier has manufactured the delivery items in accordance with technical drawings, drafts, formulae or information provided by us.
3. If the Goods are defective, We may, at our discretion, demand the remedy of the defect or delivery of defect-free Goods. In accordance with the statutory provisions, We are entitled to rescind the contract, reduce the purchase price and demand compensation or reimbursement of futile expenditure.

4. We are entitled, without giving prior notice to the Supplier, to remedy defects ourselves or have them remedied at the Supplier's expense if this is necessary in order to avert acute danger or to prevent substantial damage due to interruptions to our operations. This only applies if it is no longer possible, on account of such circumstances, to notify the Supplier and set it a deadline for remedying the defect itself. In addition, We shall be entitled to remedy the defect ourselves at the cost of the Supplier if the Supplier is in default with subsequent performance or refuses to provide subsequent performance.
5. The acceptance and/or payment of the delivered Goods by us does not constitute the waiving of warranty rights even if We are aware of the defect at the time of accepting and/or paying for the Goods.
6. We shall examine the delivered Goods for quality or quantity deviations within a reasonable period. The notification of defects is in due time provided it is received by the Supplier within 14 working days from when the Goods were inspected; for obvious defects the 14-day period commences on receipt of Goods, for latent defect when the defect is discovered. If We and the Supplier have concluded a quality assurance agreement, the provisions of the quality assurance agreement shall take precedence.
7. The limitation period for warranty claims and the time limit for rescission and the right of reduction is 36 months and begins when the Goods are delivered to us. If statute provides for longer limitation periods in individual cases, then they apply. In case of replacement delivery or remedying of defects in the context of warranty, the limitation period for replaced and remedied parts begins anew.

#### **IX. Product liability, indemnity and third-party liability insurance**

1. To the extent that the Supplier is responsible for product damage, in particular with regard to a concluded quality assurance agreement, it is required to indemnify us against compensation claims of third parties on written request and also to reimburse us in this respect for the entire damage if the cause lies in its sphere of control and organisation or the Supplier is itself liable to third parties. The statutory provisions on adjustments between joint and several debtors (*Gesamtschuldnerausgleich*) apply accordingly. Our claims and in particular the indemnification claim shall become statute-barred at the earliest three months after the date on which the claims asserted against us become statute-barred.
2. In this respect the Supplier is also obliged to reimburse us for any expenses resulting from or in connection with any recall actions carried out by us. We shall inform the Supplier of the content and scope of such recall measures – as far as possible and as far as can be reasonably expected – and give the Supplier the opportunity to comment.
3. The Supplier is obliged to maintain business and product liability insurance and recall action insurance with a cover amount of at least EUR 10 million flat rate per annum and a cover amount of at least EUR 5 million as a flat rate per occurrence for personal injury/damage to property (product liability insurance) and a flat rate per occurrence for recall costs (recall cost insurance) respectively and to provide us with proof thereof by handing over a written confirmation from the insurer that there is insurance cover at the time of conclusion of this agreement or during the term of this agreement if requested by us. The Supplier hereby assigns to us any current and future claims against its product liability insurer and its recall costs insurer respectively to the extent of its obligations. We herewith accept this assignment. If We are entitled to any further damages claims, they remain unaffected by this.

## **X. Work performed in our factories**

Persons who perform work at one of our factories in fulfilment of the agreement have to comply with the relevant statutory provisions as well as the respective Kärcher company regulations; in the event of violations We do not accept any liability for accidents occurring within our sphere of control, unless We caused the accident with intent or through gross negligence. The existing regulations for entering and exiting our factories must be adhered to.

## **XI. Drawings, models, tools**

1. Drawings, models, tools, samples, work documents and other documents that We make available to the Supplier or pay for shall remain or become our property. Any necessary transfer of possession shall be replaced by the Supplier storing the items for us free of charge with the diligence of a prudent businessperson. If and to the extent a tool loan agreement exists between us and the Supplier, this tool loan agreement takes precedence.
2. The Supplier may neither hand over for inspection nor otherwise make accessible nor duplicate the items specified in subsection XI. 1 without our express written consent. This also applies to documents that We provide for printing orders. The items produced according to the documents may not be supplied to third parties without our express written consent.
3. After completion of the order the items shall be returned to us free of charge without a special request.

## **XII. Material provided, retention of title**

1. Material that We provide for the execution of our orders shall remain our property. It shall be labelled as our property immediately after the Supplier received them, and they shall be stored separately from identical or similar material. The material may only be utilised within the scope of the agreement and planned production and not in any other manner.
2. The Supplier shall check the provided material for quality and quantity deviations upon receipt and shall not process any defective material provided. If a quality assurance agreement exists between us and the Supplier, it must be observed and it takes precedence. We must be notified of any quality and quantity deviations without undue delay. The Supplier shall be liable for damage which We incur due to the breach of these obligations. The right of the Supplier to prove that it could not detect any quality or quantity deviations of the material provided or that We did not incur any damage remains unaffected.
3. The Supplier hereby already assigns to us the future title to a new item created as a result of the processing of our material. When processing, combining or blending our material with other items the Supplier hereby already assigns to us the joint title to the new item in proportion to the value of our material compared with the value of the other material. We hereby accept such assignment. The transfer of possession shall be replaced by the Supplier storing the item for us free of charge with the diligence of a prudent businessperson.
4. The Supplier shall notify us without undue delay of a forthcoming or completed pledge or any another impairment of our rights.
5. The Supplier is obliged to insure the material We provide against all the customary risks at its expense.

### **XIII. Confidentiality**

1. The parties shall keep confidential any information which they become aware during their contractual cooperation and which relate to the business of the respective other party (hereinafter "Disclosing Party") provided the Disclosing Party has marked the respective information as confidential or has a clear interest in its being kept confidential (hereinafter "Confidential Information"). This obligation shall continue to apply once the contractual cooperation between the parties has ended.
2. There is no duty to observe confidentiality if the respective Confidential Information demonstrably
  - a) has been, at the time of the receipt by the other party receiving the Confidential Information (hereinafter "Receiving Party"), already in the public domain or enters the public domain at a later time without a duty to observe confidentiality being breached,
  - b) was already known to the Receiving Party before its receipt or if it was published by a third party entitled to do so,
  - c) is discovered or developed by the Receiving Party independently from the Confidential Information without a duty to observe confidentiality being breached and without the involvement of the Disclosing Party and without using any other information or knowledge obtained from the Disclosing Party, or
  - d) is to be disclosed based on mandatory statutory provisions or court order to the extent of such mandatory statutory provisions or court order as applicable.

The Receiving Party bears the burden of proof for any of the exceptions to apply.

3. The parties shall ensure by way of implementing and ensuring adequate measures (including contractual regulations) that only their respective employees and authorised third parties working on their behalf, in particular their freelance workers, contractors and service providers (hereinafter "Authorized Personnel") become aware of such Confidential Information that they need to know for the performance of their contractual obligations, in particular the construction and production of the Goods. In particular, the parties shall ensure that the Authorized Personnel shall refrain from any unauthorized use, forwarding or copying of Confidential Information. Moreover, the parties shall implement adequate measures to ensure confidentiality of the Confidential Information in order to avoid disclosure other than to the Authorized Personnel and any unauthorized receipt and use by any third party.
4. The respective Disclosing Party shall retain title in all technical, distribution and other information which it made available to the Receiving Party in connection with the contractual cooperation. Once the contractual cooperation has ended all documents and reproductions shall be returned by the Receiving Party to the Disclosing Party or destroyed without undue delay on written request (also by email, fax or in other text form), with the exception of the extent of any mandatory statutory provisions or court order.
5. If the parties have already entered into non-disclosure agreements, these non-disclosure agreements shall continue to apply. In case any provision of any existing non-disclosure agreements is contradictory to provisions of the Terms and Conditions of Purchase, the provisions of the non-disclosure agreements shall take precedence.
6. The Receiving Party shall, without the Disclosing Party's prior written consent, refrain from observing, studying, disassembling and testing (including any attempt to do so) any Good or ob-

ject received or obtained in any way by the Disclosing Party in order to, in such way, obtaining any information of the Disclosing Party being subject to the confidentiality obligation as described above, unless such Good or object has been made available to the public by the Disclosing Party or with the Disclosing Party's prior consent.

#### **XIV. Place of performance, place of jurisdiction, applicable law**

1. The place of performance is the place at which the Goods are to be delivered or the service is to be provided in line with our instructions. The place of payment is Winnenden.
2. If the Supplier is a merchant, Stuttgart ("Stuttgart-Mitte") shall be agreed as the place of jurisdiction. However, We are also entitled to institute legal proceedings against the Supplier at his registered office.
3. If the Supplier has its place of business in Germany, German law shall apply exclusively. If the Supplier does not have its place of business in Germany, the United Nations Convention on Contracts for the International Sales of Goods (CISG) applies even if the Supplier's place of business is not located in a state party to the CISG. In addition thereto German law applies exclusively, excluding the reference provisions of private international law.

#### **XV. Severability clause**

If one or more provisions of these Terms and Conditions of Purchase should be or become invalid or unenforceable, this shall not affect the validity of the other provisions of these Terms and Conditions of Purchase. The same applies if these Terms and Conditions of Purchase do not contain a provision that is actually necessary. The parties shall replace the invalid or unenforceable provision with a provision which is legally valid and enforceable, which in economic terms reflects as closely as possible the essence and purpose of the invalid or unenforceable provision. Should these Terms and Conditions of Purchase be incomplete, the parties shall conclude an agreement with the content they would have agreed upon had they been aware of the omission when concluding the Terms and Conditions of Purchase.

#### **XVI. UN Convention on Contracts for the International Sale of Goods (CISG)**

Whenever the United Nations Convention on Contracts for the International Sales of Goods (CISG) is applied the following applies in addition to the provisions above:

1. Instead of subsection VIII.3 the following provision applies  
If the Goods are not in accordance with the contract, We may at our discretion demand a replacement delivery or remedying of the defects. Alternatively, We have the right to reduce the purchase price pursuant to Art. 50 CISG. Furthermore, We have the right to demand cancellation of the contract; if the breach of contract is significant We are not required to set a grace period pursuant to Art. 47 (1) CISG. If We demand remedying of the defects and it fails, We are nevertheless entitled to cancel the contract, demand a proportionate reduction in the purchase price or receive a replacement delivery. In addition to the aforementioned legal remedies We may also demand compensation. We do not lose the right to demand compensation by exercising other legal remedies.
2. Instead of subsection VIII.6 the following provision applies  
We shall examine the delivered Goods for quality or quantity deviations within a reasonable



period. Notice of the non-conformity is on time provided the Supplier receives it within 14 days after detection, but at the latest 2 years after handover of the Goods to us. If a quality assurance agreement exists between us and the Supplier, the provisions therein on the duty to examine and notify defects shall apply and take precedence.