

# General Terms and Conditions of Purchase of Köttermann GmbH

Last update: September, 2<sup>nd</sup> 2019

## 1. Scope of Application, Form

1.1 These General Terms and Conditions of Purchase (hereinafter referred to as "GCP") shall apply to all business relationships with our business partners and suppliers ("Sellers"). The GCP only apply if the Seller is an entrepreneur subject to § 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.

1.2 The GCP shall apply in particular to contracts for the sale and / or delivery of movable goods ("Goods"), regardless of whether the goods are manufactured by the Seller himself or purchased by him from third-party suppliers (§§ 433, 650 BGB) (German Civil Code). Unless otherwise agreed, the GCP shall apply in the version valid at the time the purchaser placed the order or in the version last communicated to him in text form as a framework agreement also for similar future contracts, without us having to refer to them again in each individual case.

1.3 These GCP shall apply exclusively. Any divergent, conflicting or supplementary General Terms and Conditions of the Seller shall only become part of the contract if we have expressly agreed to their validity in writing. This approval requirement shall apply in any case, for instance, even if we unconditionally accept the deliveries in full knowledge of the Seller's General Terms and Conditions.

1.4 Individual agreements reached with the Seller in particular cases (including any subsidiary agreements, amendments and alterations) shall in all cases take precedence over these GCP. Subject to proof to the contrary, the contents of such agreements shall be determined by a written contract or our written confirmation.

1.5 Legally relevant statements and notifications of the Seller with regard to the contract (e.g. setting of deadlines, reminders, withdrawal) shall be submitted to us in writing (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, especially in case of doubt regarding the declarant's legitimacy, shall remain unaffected.

1.6 References to the validity of statutory provisions are solely for the purpose of clarification. Therefore, the statutory provisions shall apply even without any such clarification unless they have been directly amended or explicitly excluded in these GCP.

## 2. Conclusion of Contract

2.1 Our order shall only be binding after it has been placed or confirmed in writing. Any obvious errors (e.g. typing or calculation errors) and omissions in the purchase order or in any associated order documents shall be notified to us by the Seller before acceptance for the purpose of correction or completion; otherwise, the contract shall not be deemed concluded.

2.2 The Seller shall be obliged to confirm (acceptance) our order in writing within a period of three (3) working days. Any delayed acceptance shall be considered a new offer and requires acceptance on our part.

2.3 We shall be entitled to change the date and place of delivery at any time by giving written notice of at least 14 calendar days prior to the agreed delivery date. The same shall apply for changes to product specifications, provided these can be implemented within the normal production process of the Seller without any significant additional expenditure, whereby, in these cases, the notification period according to the afore-mentioned provision shall be at least 4 weeks. We shall in each case reimburse the Seller any proven and reasonable additional costs incurred due to the change. Should such changes cause delays in delivery, which cannot be avoided in the Seller's normal production and business operations despite reasonable effort, the originally delivery date agreed upon shall be postponed accordingly. The Seller shall inform us in writing about his careful assessment of the anticipated additional costs or delivery delays in due time prior to the delivery date, however at least within 5 working days after receipt of our notification mentioned in Sentence 1.

2.4 We shall be entitled to terminate the contract at any time by giving a written statement and indication of the reason, if we can no longer use or can only use the ordered products with significant expenses in our business operations due to circumstances arising after conclusion of the contract, for which the Seller is responsible (such as the lack of compliance with legal requirements), or the Seller's financial situation deteriorates after conclusion of the contract in such a way that a contractual delivery is not to be expected.

## 3. Time of Delivery, Default of Delivery

3.1 The delivery date specified by us in the purchase order shall be binding. The Seller shall be obliged to inform us immediately in writing if he is not able - for whatever reason - to comply with the agreed delivery times. Premature deliveries shall not be permitted. The Seller shall not be authorised to partial deliveries without our prior consent.

3.2 If the Seller fails to provide performance or to do so within the agreed delivery time or is in default, our rights – in particular the right to withdraw from the contract or to claim damages – shall be governed by the statutory provisions. The provisions specified in section 3 shall remain unaffected.

3.3 Should the Seller be in default, we shall be entitled – in addition to further statutory claims – to demand lump-sum compensation for our damage caused by the delay in the amount equivalent to 0.3% of the net price per each commenced working day, however not exceeding a total of 5% of the net price for the goods delivered behind schedule. We reserve the right to prove that a higher loss was incurred. The Seller, in turn, shall be entitled to provide evidence that no loss at all or only a significantly lower loss occurred.

3.4 The party affected by Force Majeure shall be exempt from the obligation to deliver or accept for the duration and in the scope of the effects. Force Majeure shall mean any event beyond the sphere of influence of the concerned party, whether wholly or partially so as to prevent the party from fulfilling its obligations, including fire damage, floods, strikes, and lawful lockouts, as well as operational breakdowns or official dispositions not caused by it. Supply difficulties and other performance disruptions on the part of the Seller's sub-suppliers shall only be deemed as being Force Majeure if the sub-supplier in turn is prevented from providing the service incumbent upon it by an event pursuant to S. 1.

The affected party shall immediately notify the other party of the occurrence and cessation of Force Majeure and use its best endeavors to remedy the Force Majeure and to limit its effects as much as possible.

In the event of Force Majeure, the parties shall agree on the further procedure and decide whether after its cessation, the products not delivered during this time, should be delivered subsequently. Notwithstanding this, each party shall be entitled to withdraw from the orders affected if Force Majeure lasts more than twelve (12) weeks from the agreed delivery date.

#### **4. Service, Delivery, Transfer of Risk, Default of Acceptance**

4.1 The Seller shall not be entitled to have third parties (subcontractors) render his service without our prior written consent. The Seller shall bear the procurement risk for his services unless otherwise agreed in individual cases (e.g. stock restriction).

4.2 In the event of services and deliveries with installation or assembly, the risk shall be transferred upon acceptance; for deliveries without installation or assembly, the transfer of risk shall occur upon acceptance by us at the place of destination. If the Seller's places of business and destination are within the EU, the DDP (named place of destination) Incoterms® 2010 shall apply, where deliveries shall take place on site or directly at third parties at Seller's expense and risk. If the destination is not specified and no other agreement has been reached, the goods shall be delivered to our place of business in Uetze, Germany. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (debt to be discharged at our place of business). The goods must be packed in such a way that transport damages are avoided. The use of packaging material shall be limited to the amount required for this purpose. Only environmentally friendly packaging materials may be used. The Seller's obligation to take back the packaging shall be governed by the statutory provisions.

4.3 The delivery shall include a delivery note stating the date (issue and dispatch), the contents of the delivery (item numbers and quantity, gross and net weight) as well as our order identification (date, order number, part number and designation). If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. "Partial deliveries" or "remaining deliveries" shall be identified as such in the delivery documents.

4.4 The Seller shall fulfil all requirements of the applicable national and international customs and foreign trade law ("foreign trade law"). He shall advise us in writing within two weeks after receipt of order - and in case of changes without undue delay - of all information and data that we require to comply with the foreign trade law in export, import and re-export, in particular:

- the statistical goods code according to the current list of goods for the foreign trade statistics, at least the HS (Harmonized System) Code and
- Supplier's declarations of preferential origin (for European suppliers) or certificates of preference (for non-European suppliers); indication of the country of origin in case of a non-preferential origin.

4.5 The risk of accidental loss or accidental deterioration of goods shall be transferred to us upon delivery of goods at the place of performance. If an acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of law governing contracts for work and services shall apply accordingly in the event of an acceptance. This shall be deemed equivalent to handover/delivery or acceptance if we are in default of acceptance.

4.6 Occurrence of our default of delivery shall be according to the statutory provisions. However, the Seller must also expressly offer his services to us if a specific or determinable calendar date has been agreed for an action or cooperation on our part (e.g. provision of material). Should we be in default of acceptance, the Seller may demand compensation for his additional expenses in accordance with the statutory provisions (§ 304 BGB) (German Civil Code). If the contract relates to a non-fungible item to be manufactured by the Seller (custom-made item), the Seller shall only be entitled to further rights if we have committed ourselves to cooperate and are responsible for the failure to cooperate.

#### **5. Prices and Terms of Payment**

5.1 The price specified in the purchase order shall be binding. All prices include statutory value added tax unless they are shown separately.

5.2 Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) as well as all additional costs (e.g. proper packaging, transportation costs, including any transportation and liability insurance).

In particular, no remuneration or compensation for visits or preparation of offers or projects shall be granted, unless otherwise agreed in individual cases.

5.3 The agreed price shall be due for payment within 30 calendar days from the date of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make the payment within 14 calendar days, the Seller shall grant us 3% discount on the net amount invoiced. In case of a bank transfer, the payment shall be deemed to be in time if our transfer order is received by our bank before expiry of the payment period. We shall not be responsible for delays caused by the banks involved in the payment transaction. Invoices must be sent to us with the supplement text "Invoice Verification" in the address field. Moreover, our order and part number shall also be specified.

5.4 We shall not owe maturity interests. The statutory provisions shall apply for delay in payment.

5.5 We shall be legally entitled to set-off and retention rights as well as to the plea of non-performance of the contract. In particular, we shall be entitled to withhold any due payments as long as we still have claims against the Seller due to incomplete or faulty performance.

5.6 The Seller shall be entitled to set-off and retention rights only for legally valid or undisputed counterclaims.

## **6. Secrecy, Retention of Title and Material Provisions**

6.1 We reserve the right of ownership and copyright to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents provided by us. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents shall be kept secret from third parties even after termination of the contract. This duty of confidentiality expires only if and to the extent that the information contained in the provided documents has become public knowledge.

6.2 The above-mentioned provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items provided by us to the Seller for manufacturing. Unless they are processed, items of this kind shall be kept separately at the Seller's expense and insured against destruction and loss to a reasonable extent.

6.3 Any processing, mixing or combination (further processing) of supplied items by the Seller shall be carried out on our behalf. The same shall apply to further processing of the delivered goods by us, so that we shall be deemed to be the manufacturer and acquire ownership of the product in accordance with the statutory provisions at the latest upon further processing.

6.4 Title to the goods shall be transferred to us unconditionally and regardless of the payment of the purchase price. If, however, in individual cases, we accept an offer from the Seller to transfer ownership conditioned by the payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the delivered goods. In the normal course of business, we shall remain authorised to resell the goods, even before payment of the purchase price, by assigning the resulting claim in advance (alternatively, simple reservation of title and, regarding the resale of goods, prolonged reservation of title). This excludes all other forms of retention of title, in particular the expanded, the forwarded and the prolonged retention of title for further processing.

6.5 Material provisions shall remain our property and shall be stored, labelled and managed separately and free of charge. Their takeover shall be confirmed at our request. Their use shall be permitted for our orders only. In case of impairment or loss, the Seller must provide compensation. Any claims for compensation arising from a delayed material provision as well as a right of retention of the Seller shall be excluded.

## **7. Defective Delivery**

7.1 Unless otherwise provided below, the statutory provisions shall apply regarding our rights in case of defects as to quality and title of the goods (including wrong or short delivery, inadequate assembly, defective assembly and operating instructions or user manuals) or any other breach of duty by the Seller.

7.2 In particular, the Seller shall warrant that the goods have the agreed quality upon transfer of risk to us in accordance with the statutory provisions. Any product descriptions which – e.g. through identification or reference in the purchase order – are part of the respective contract or have been included into the contract in the same way as these GCP shall be deemed to be an agreement on quality. It makes no difference whether the product description originates from us, the Seller or the manufacturer.

7.3 With regard to the commercial duty to inspect the goods and to give notice of any defects, the statutory provisions (§§ 377, 381 HGB) (German Commercial Code) shall apply with the following proviso: Our duty of inspection shall be limited to defects that become apparent during our incoming goods inspection under visual examination including the delivery documents (e.g. transportation damage, wrong and short delivery), as well as during our quality inspection by random sampling. If acceptance has been agreed, there shall be no duty to inspect. It also depends on the extent to which an inspection is feasible in the normal course of business, taking into account the circumstances of the individual case. Our duty to give notice of the defects discovered at a later time shall remain unaffected. Notwithstanding our duty to inspect, our complaints (notification of defects) shall - in all cases - be deemed prompt and timely if they have been sent within 5 working days after detection of defects or, in case of obvious defects, after delivery.

7.4 Subsequent performance shall also include the disassembly of defective goods and reassembly, provided that the goods have been installed or attached to another item in accordance with their nature and intended use; our statutory claim for compensation of corresponding expenses shall remain unaffected. The costs required for inspection and subsequent performance shall be borne by the Seller even if it turns out that there actually was no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; however, we shall only be liable if we actually realised or grossly negligently failed to realise the non-existence of the defect.

7.5 Notwithstanding our statutory rights and the regulations mentioned in section 4, the following shall apply: If the Seller fails to meet his obligation to subsequent performance - at our choice either by remedying the defect (repair) or by supplying a defect-free item (replacement delivery) - within a reasonable period specified by us, we shall be entitled to remedy the defect ourselves and demand reimbursement from the Seller of the expenses incurred or an appropriate advance payment. If subsequent performance by the Seller has failed or is unacceptable to us (e.g. due to special urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), there shall be no need to set a deadline; we shall inform the Seller of such circumstances immediately or in advance, if possible.

7.6 Upon receipt of our notice of defects by the Seller, the limitation period of warranty claims is inhibited until the Seller rejects our claims or declares that the defect has been removed or refuses to continue negotiations on our claims. In the event of replacement delivery and remedy of defects, the warranty period for replaced and repaired parts begins again, unless - due to the Seller's behaviour - we had to assume that he was not obliged to take this measure, but instead undertook the replacement delivery or removal of defects only as a gesture of goodwill or for similar reasons.

7.7 In addition, we shall be entitled to reduce the purchase price or withdraw from the contract in the event of a defect as to quality or title in accordance with the statutory provisions. Furthermore, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **8. Recourse against the Supplier**

8.1 In addition to any other claims for defects, we shall be entitled without restriction to the claims of recourse within the supply chain as provided by law (recourse against the supplier pursuant to §§ 445a, 445b, 478 BGB (German Civil Code)). In particular, we shall be entitled to demand precisely such kind of supplementary performance (rectification or replacement delivery) from the Seller as we owe our customer in the individual case. Our statutory right of choice (§ 439 Sec. 1 BGB) (German Civil Code) shall not be restricted hereby.

8.2 Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses according to §§ 445a Sec. 1, 439 Sec. 2 and 3 BGB (German Civil Code)), we shall inform the Seller of the respective matter and, giving a brief account of the facts, request a written statement. If the statement is not submitted within a reasonable period of time and no mutually satisfactory solution can be reached, the claim for defects actually granted by us shall be deemed owed to our customer. In this case, it shall be incumbent on the Seller to provide evidence to the contrary.

8.3 Our claims arising out of the recourse against the supplier shall also apply if the defective goods were further processed – e.g. through integration into another product – by us or by another contractor.

## **9. Manufacturer's Liability**

9.1 If the Seller is responsible for any damage to the product, he shall exempt us from any damages claimed by a third party provided that the cause lies within his sphere of control and organisation and the Seller is liable to third parties.

9.2 Under his exemption obligation, the Seller shall reimburse any expenses pursuant to §§ 683, 670 BGB (German Civil Code) that arise from or in connection with a claim from a third party, including any product recalls that we have carried out. We shall inform the Seller of the content and scope of the recall measures to be performed - to the extent possible and reasonable –and give him the opportunity to make a statement on the matter. Further legal claims remain unaffected.

9.3 The Seller shall take out and maintain product liability insurance, granting lump-sum coverage of at least EUR 10 million per personal injury / property damage.

## **10. Intellectual Property Rights**

10.1 In accordance with section 2, the Seller shall guarantee that the products supplied by him do not infringe any third-party intellectual property rights in countries of the European Union or other countries, in which the products are manufactured by the Seller or on behalf of the Seller.

10.2 If a third party raises claims against us for infringement of industrial property rights mentioned in section 1, the Seller shall be obliged to indemnify us against all such claims and shall refund us with all necessary expenses in connection with the claim. This shall not apply if the Seller proves that he was neither responsible for the infringement of property rights nor should he have been aware of it when applying commercial diligence at the time of delivery.

10.3 Our further statutory claims due to legal defects of the products delivered to us shall remain unaffected.

## 11. Limitation Period for Claims

11.1 The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise agreed below.

11.2 Contrary to § 438 Sec. 1 No. 3 BGB (German Civil Code), the general limitation period for claims arising from defects shall be 3 years after the transfer of risk. If an acceptance has been agreed, the limitation period begins at the time of acceptance. The 3-year limitation period shall also apply to claims arising from defects of title. However, the statutory limitation period for claims for surrender in rem by third-parties (§ 438 Sec. 1 No.1 BGB) (German Civil Code) shall remain unaffected. In addition, claims arising from defects of title shall under no circumstances be statute-barred as long as the third party is still able to assert the right against us, especially in the absence of limitation.

11.3 The limitation periods of sales law, including the aforementioned extension, apply to all contractual claims for defects to the extent permitted by law. If we are also entitled to any non-contractual claims for compensation due to a defect, the regular statutory limitation period shall apply (§§ 195, 199 BGB) (German Civil Code), unless the application of the limitation periods of sales law leads to a longer limitation period in individual cases.

## 12. Compliance with Laws

12.1 The Seller shall be obliged to comply with the relevant statutory provisions in connection with the contractual relationship. This shall apply in particular to anticorruption and money laundering laws, antitrust, labour and environmental protection regulations as well as the requirements for product labelling and traceability.

12.2 The Seller shall ensure that the products supplied by him comply with all relevant requirements for placing them on the market in the agreed countries / states (unless otherwise agreed by the Federal Republic of Germany). Upon request, he must provide proof of compliance by providing suitable documents.

12.3 In individual cases, the Seller and we shall conclude corresponding quality assurance and / or environmental protection agreements.

## 13. Applicable Law and Place of Jurisdiction

13.1 These GCP and the contractual relationship between ourselves and the Seller are governed by the law of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the UN Convention on the International Sale of Goods.

13.2 If the Seller is a merchant in terms of the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive and international place of jurisdiction for all disputes between the parties arising out of the contractual relationship shall be our place of business in Uetze, Germany. The same shall apply if the Seller is an entrepreneur subject to § 14 BGB (German Civil Code). However, in all cases, we shall also be entitled to initiate proceedings against the Seller at the place of performance of the delivery obligation in accordance with these GCP or a preferential individual agreement or at the Seller's general legal venue. Preferential legal provisions, especially on exclusive jurisdictions, shall remain unaffected.

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