

## General Terms and Conditions of Sale and Delivery of Köttermann GmbH

Last update: 01.01.2022

### 1. Scope

1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "**Terms and Conditions**") govern the legal relationship between the Köttermann GmbH (hereinafter referred to as "**Köttermann**") and its customers with respect to all current and future contracts for the sale and/or delivery of movable goods ("**Delivery Item**", "**Products**"), irrespective of whether Köttermann manufactures the Products itself or purchases them from suppliers.

1.2 These Terms and Conditions apply exclusively, unless expressly agreed otherwise in individual cases between Köttermann and the customer. Köttermann does not accept the customer's general terms and conditions of business or purchase, even if Köttermann does not expressly object to these. This shall also apply if Köttermann unconditionally carries out the delivery to the customer despite having knowledge of the customer's general terms and conditions of business or purchase.

1.3 These Terms and Conditions shall only apply to entrepreneurs (§ 14 BGB), legal entities under public law or special funds under public law.

1.4 Individual agreements made in individual cases with the customer (including collateral agreements, supplements and amendments) shall in any case take precedence over these Terms and Conditions. Subject to proof to the contrary, a written contract or written confirmation from Köttermann is authoritative for the content of such agreements.

### 2. Conclusion of Contract

2.1 All offers made by Köttermann regarding purchases and/or deliveries are non-binding and subject to confirmation. This also shall apply if Köttermann makes catalogues and/or other sales documents available to the customer.

2.2 The order of the Products by the customer shall be deemed a binding offer to enter into a contract. A contract is then concluded by the written order confirmation from Köttermann and is based exclusively on the content of the order confirmation and these Terms and Conditions. The drawings attached to the order confirmation and to be released by the customer in the order preparation process form an integral part of the contract.

2.3 Köttermann reserves all rights to the sales documents (in particular illustrations, drawings, design proposals), also in electronic form, and to samples. They must not be made accessible to third parties and shall be returned to Köttermann immediately upon request. The customer shall have no right of retention.

### 3. Prices, Terms of Payment

3.1 Unless otherwise agreed with the customer, Köttermann charges all prices ex works (EXW according to the latest version of the INCOTERMS) in Euro (EUR) exclusive the current statutory value added tax. Packaging and shipping costs will be invoiced separately. The customer shall bear any customs duties, fees, taxes and other charges arising in connection with the import of the deliveries.

3.2 Changes in prices are permissible if there are more than four (4) months between the conclusion of the contract and the delivery deadline. In this case Köttermann is entitled to increase the price in accordance with the cost increase, subject to a notice period of four (4) weeks. If the price increase is more than 5%, the customer shall be entitled to withdraw from the contract; in this case, withdrawal shall be declared in writing within two (2) weeks after notification of the price increase.

3.3 Köttermann reserves the right to demand advance payments or securities if doubts about the customer's ability to pay become apparent within the scope of a credit assessment. Otherwise, Köttermann's invoices are due for payment without deduction within seven (7) days after delivery of the invoice at the latest; if the deadline expires unsuccessfully, the customer is in default of payment.

3.4 Köttermann accepts cheques only after special agreement and only subject to actual performance.

3.5 If the customer is in default of payment, Köttermann is entitled to charge default interest at the statutory rate. The assertion of further damages caused by payment default remains unaffected.

3.6 If Köttermann becomes aware of the risk of the customer's inability to perform after conclusion of the contract, Köttermann shall be entitled to perform outstanding deliveries only against advance payment or provision of security. Köttermann shall set a reasonable deadline for the payment of advance payments or securities, which must not be less than one (1) week. If the advance payments or securities have not been provided after expiry of the deadline, Köttermann may withdraw from the affected contract in whole or in part. Köttermann reserves the right to assert further rights.

3.7 The customer shall only be entitled to a right of set-off if his counterclaim has been finally established by a binding legal decision or is undisputed. The customer shall only be entitled to exercise a right of retention in as far as his counterclaim is based on the same contractual relationship and is undisputed or has been finally established by a binding legal decision.

3.8 Full payment by the customer shall be deemed as acceptance of the Delivery Item and leads to the transfer of risk (where this has not already taken place).

#### **4. Delivery Time**

4.1 Delivery dates and delivery deadlines are only binding if they have been confirmed in writing by Köttermann and the customer has provided Köttermann with all information and documents required for the execution of the delivery in good time and has fulfilled his other duties to cooperate. In the case of additional or extended orders placed at a later date, the deadlines shall be extended accordingly.

4.2 A delivery deadline shall be extended by the period in which the customer is in default with his obligations towards Köttermann. The rights of Köttermann due to default of acceptance by the customer remain unaffected.

4.3 If Köttermann is unable to comply with binding delivery deadlines for reasons for which Köttermann is not responsible (e.g. due to non-availability), Köttermann will inform the customer of this immediately and at the same time inform the customer of the expected new delivery deadline. If performance remains unavailable within the new delivery period, Köttermann shall be entitled to withdraw from the contract in whole or in part; in this case, Köttermann shall immediately reimburse any consideration already rendered by the customer. The case of non-availability in this sense shall include in particular where a supplier fails to deliver to Köttermann in a timely fashion if neither Köttermann nor the supplier is at fault.

4.4 Köttermann shall be entitled to make delivery before the expiry of the delivery period if the customer does not incur any significant additional expenses as a result.

4.5 Köttermann shall be entitled to make partial deliveries if the partial delivery can be used by the customer within the scope of the contractual intended purpose, if the delivery of the remaining ordered Products is ensured and if the customer does not incur any considerable additional expenses.

4.6 Events that are unforeseeable, unavoidable and those that are beyond Köttermann's sphere of influence and for which Köttermann is not responsible, such as force majeure, official measures, energy shortages, machine breakdowns, war, natural disasters or labor disputes, release Köttermann for their duration from the obligation to provide deliveries on time. Agreed deadlines shall be extended by the duration of the disturbance; the customer shall be informed of the occurrence of the

disturbance in an appropriate manner. If the end of the disruption cannot be foreseen or if it lasts longer than three (3) months, both contractual parties shall be entitled to withdraw from the contract with regard to the scope of services affected.

4.7 The occurrence of a delay in delivery on the part of Köttermann shall otherwise be governed by the statutory provisions. In any case, a reminder from the customer shall be required.

4.8 If the customer is in default of acceptance, if he violates other obligations to cooperate or if the delivery is delayed for other reasons for which the customer is responsible, Köttermann shall be entitled, without prejudice to other rights, to demand compensation for the resulting damage including any additional expenses (e.g. storage of the Delivery Item at the risk and expense of the customer). In this case, the risk of accidental loss or accidental deterioration of the Delivery Item shall pass to the customer at the time of default in acceptance or other breach of cooperation obligations.

## 5. Packaging

Köttermann will advise the customer on request concerning the appropriate packaging for the shipping route chosen by him. The costs of transport packaging shall be borne by the customer.

## 6. Terms of Delivery

6.1 Unless expressly agreed otherwise with the customer, all deliveries and any Specific Performance by Köttermann shall be ex works (EXW) Uetze-Hänigsen, in accordance with the current version of the INCOTERMS.

6.2 The risk of accidental loss and accidental deterioration of the Products (e.g. loss or damage) shall pass to the customer at the latest when the Products are handed over. In the case of sale by delivery to destination, however, the risk of accidental loss and accidental deterioration of the Products as well as the risk of delay shall pass to the customer when the Delivery Item is handed over to the transport company. If the delivery or dispatch is delayed for reasons for which the customer is responsible, the risk shall pass to the customer on the day of notification that the Delivery Item is ready for dispatch. If acceptance has been agreed, this shall be decisive for the transfer of risk. In addition thereto, the statutory provisions of the law governing contracts for work (*Werkvertragsrecht*) shall also apply *mutatis mutandis* to acceptances where an acceptance has been agreed upon. The handover or acceptance shall be deemed to have taken place if the purchaser is in default of acceptance. If the customer is in default of acceptance, he shall confirm this in writing upon Köttermann's request.

6.3 At the customer's request, deliveries shall be insured at the customer's expense against theft, transport damage and other insurable risks.

6.4 Transport damage or loss must be reported to Köttermann immediately, at the latest within four (4) working days, under provision of the damage assessment of the railway and/or post services.

## 7. Warranty, Claims for Defects

7.1 The statutory provisions shall apply to the customer's rights in the event of quality defects and defects of title (including incorrect and underdelivery as well as improper assembly or defective assembly instructions), unless otherwise specified below. Claims for supplier redress are excluded if the defective Products have been further processed by the customer or another entrepreneur and/or third party, e.g. by installation in another product, and Köttermann is thus merely in the position of a supplier.

7.2 Köttermann warrants that the Delivery Item has an agreed quality upon the transfer of risk; the quality will exclusively be determined in accordance with the concrete agreements made in writing between the contracting parties regarding the properties, characteristics and performance characteristics of the Delivery Item ("Quality Agreement"). Minor deviations in

structure and colour from the agreed quality are, however, reserved insofar as these are in the nature of the materials used and customary in the trade. If a quality has not been agreed, it is to be judged according to the legal regulation whether a defect is present or not. No liability is assumed for public statements made by manufacturers and/or other third parties.

7.3 Information in catalogues, price lists and other information material provided to the customer by Köttermann as well as information describing the Product(s) are under no circumstances to be understood as guarantees for a special quality of the Delivery Item; such quality guarantees must be expressly agreed in writing.

7.4 The rights of the customer due to defects of the Delivery Item are subject to the pre-condition that the customer has properly fulfilled his statutory obligations to inspect and give notice of defects. The Delivery Item shall be carefully inspected immediately after delivery to the customer or to the third party designated by the customer. Köttermann must be notified immediately in text form of obvious defects and complaints due to missing or incorrect parts, but no later than four (4) working days after delivery. If the customer does not comply with his duty of notification, obvious defects and/or other defects which would have been recognisable in an immediate, dutiful inspection shall be deemed to have been approved by the customer and Köttermann's liability shall be excluded. Hidden defects must be reported in text form immediately after their discovery, but no later than four (4) working days after discovery.

7.5 Köttermann has the right to inspect and examine the Delivery Item complained about in the event of any notice of defects. The customer will grant Köttermann the necessary time and opportunity for this. If a notice of defect by the customer proves to be unjustified and if this was recognizable to the customer by application of due diligence before the notice of defect was lodged, he shall be obligated to compensate Köttermann for all expenses incurred in this connection, e.g. travel or shipping costs.

7.6 Köttermann will remedy defects in the Delivery Item at its own discretion either by eliminating the defect free of charge for the customer or by replacing it with a defect-free item (jointly referred to as "Specific Performance"). The customer shall grant Köttermann the reasonable time and opportunity necessary for Specific Performance. In the event of a replacement delivery, the customer must return the defective item in accordance with the statutory provisions. Köttermann shall be entitled to make any Specific Performance owed dependent on the customer paying the purchase price due. However, the customer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.

7.7 Köttermann shall bear the expenses necessary for the purpose of Specific Performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. Specific Performance does not include the dismantling of the defective item nor the reinstallation if Köttermann was not originally obligated to install it.

7.8 If Specific Performance fails, is unacceptable to the customer or has been refused by Köttermann, the customer may, at his discretion and in accordance with the statutory provisions, withdraw from the contract or reduce the purchase price and/or claim damages in accordance with section 8 of these Terms and Conditions or demand reimbursement of his expenses.

7.9 The limitation period for the customer's rights due to defects in the Delivery Item shall be one (1) year from delivery or transfer of risk if this occurs prior to delivery. However, this does not apply if the law prescribes longer periods in connection with the delivery of goods for buildings. If an acceptance has been agreed, the limitation period shall commence upon acceptance. Claims for damages of the customer for reasons other than defects of the Delivery Item, as well as in connection with the rights of the customer in the case of fraudulently concealed or intentionally caused defects or in the case of claims under the Product Liability Act shall become statute-barred in accordance with the statutory limitation periods.

7.10 The above limitation periods shall also apply to contractual and non-contractual claims for damages by the customer based on a defect in the Delivery Item, unless the application of the regular statutory limitation period (§§ 195, 199 of the German Civil Code) would lead to a shorter limitation period in individual cases. Claims for damages by the customer under the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

7.11 When selling a used Delivery Item, all rights of the customer due to defects are excluded to the extent permitted by law. The rights of the customer according to this section 7 are further excluded in cases of natural wear and tear, incorrect or negligent handling, excessive usage, defective construction work, unsuitable structural conditions, chemical, electrical or weather and natural influences, incorrect assembly and/or installation by the customer, the use of unsuitable accessories or unsuitable spare parts or the performance of unsuitable repair measures or in the case of omitted maintenance, unless Köttermann is, in spite of the above, still responsible for the defects.

## **8. Liability, Limitation of Liability**

8.1 Unless otherwise stated in these Conditions, Köttermann shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions. This shall apply in particular to damages arising from intentional or grossly negligent breach of contract.

8.2 Köttermann shall be liable for simple or slight negligence, subject to a milder liability standard according to legal regulations, only for damages resulting from death, personal injury or health and in case of violation of an essential contractual obligation (Cardinal Obligation). A Cardinal Obligation refers abstractly to such obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the contractual partner may regularly rely.

8.3 Liability in the event of a breach of a Cardinal Obligation pursuant to section 8.2 of these Conditions shall be limited in amount to the foreseeable, typically occurring damage.

8.4 The limitations of liability resulting from sections 8.2 and 8.3 shall apply with regard to all claims for damages, irrespective of their legal basis, in particular also with regard to pre-contractual and ancillary claims. The limitations of liability shall also apply to breaches of duty by or for the benefit of persons Köttermann is responsible for in accordance with statutory provisions. They do not apply if Köttermann fraudulently concealed a defect or assumed a guarantee for the quality of the Products and for claims of the customer under the Product Liability Act.

8.5 Due to a breach of duty which does not consist in a defect, the customer can only withdraw or terminate the contract if Köttermann is responsible for the breach. A right to freely terminate the contract by the customer (in particular according to §§ 650, 648 of the German Civil Code) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

8.6 The customer shall be obligated to take appropriate measures to avert damage and reduce it.

## **9. Product Liability**

If the customer sells the Delivery Item unchanged or after processing, alteration, combination, mixing or blending with other goods, he shall indemnify Köttermann *inter partes* against product liability claims of third parties in as far as he is responsible for the defect triggering the liability.

## **10. Retention of Title, Security Deposit**

10.1 The Delivery Items delivered by Köttermann to the customer or made available to the customer remain the property of Köttermann ("Reserved Goods") until all claims to which Köttermann is entitled against the customer from the business relationship have been satisfied in full. The customer shall be obligated to handle the Reserved Goods carefully for the duration of the reservation of title.

10.2 Until revoked, the customer shall be entitled to process, sell and transfer the ownership of the Reserved Goods within the scope of normal business operations. However, the customer shall not be entitled to pledge the Reserved Goods, to assign them by way of security or to make other dispositions endangering Köttermann's ownership. The customer shall inform

Köttermann immediately in text form if an application for the opening of insolvency proceedings is filed against his assets or if third parties access the Reserved Goods (e.g. seizure). In order to secure his payment obligations from the individual contract and/or the delivery contracts concluded on its basis, the customer hereby assigns to Köttermann all present and future claims from the sale of the Reserved Goods to third parties in the amount of the invoiced amount including value added tax; Köttermann hereby accepts this assignment. The customer shall be authorized to collect the claims as trustee of Köttermann. Köttermann's right to collect the claims against third parties itself remains unaffected; Köttermann will not collect the claim itself, however, as long as the customer meets his payment obligations towards Köttermann.

10.3 In the event of processing with other goods belonging to a third party, Köttermann acquires co-ownership of the processed or newly manufactured goods in the ratio of the invoice value of the Reserved Goods to the other processed goods. The same applies if the Reserved Goods are mixed or combined with other objects not belonging to Köttermann. In all cases mentioned, the customer must keep the goods owned or co-owned by Köttermann in safe custody for Köttermann free of charge. For the rest, the provisions of section 10.2 shall apply accordingly.

10.4 If the Reserved Goods are connected or mixed with a plot of land or a movable object in such a way that Köttermann's ownership of the Reserved Goods expires, the customer shall assign to Köttermann the claim as security in the amount of the ratio of the value of the Reserved Goods to the other connected or mixed objects at the time of connection/mixing which accrue to him against the third party due to the connection or mixing.

10.5 Köttermann shall release the securities specified under this section 10 at the request of the customer if and to the extent the value of the existing securities exceeds Köttermann's claims by more than 10 %.

10.6 If a security pursuant to sections 10.1 to 10.5 is ineffective and/or cannot be enforced by way of execution in the territory to which the Reserved Goods are delivered, or if the value of the security is not sufficient to adequately secure Köttermann's payment claims against the customer due to the performance of the deliveries, the customer shall be obligated, upon Köttermann's written request, to provide Köttermann with a bank guarantee or equivalent security to secure Köttermann's payment claims. Irrespective of this, the customer will do everything in his power necessary to immediately create corresponding security rights for Köttermann in the case of deliveries to countries in which the above retention of title provision does not have the same security effect as in Germany. The customer shall cooperate in all measures, such as registration, publication, etc., which are necessary and conducive to the effectiveness and enforceability of such security rights.

10.7 The customer shall provide Köttermann at any time with all requested information about the Reserved Goods or about claims which have been assigned to Köttermann in accordance therewith. The customer shall notify Köttermann immediately of any access to or claims by third parties to goods subject to retention of title and provide the necessary documents. At the same time, the customer shall inform the third party of Köttermann's retention of title. The costs of defending against such accesses and claims shall be borne by the customer.

10.8 If the customer defaults on essential obligations such as payment to Köttermann, Köttermann may withdraw from the contract in accordance with the statutory provisions and/or demand the return of the Products on the basis of the retention of title and dispose of them elsewhere for the purpose of satisfying due claims against the customer. If the customer does not pay the due purchase price, Köttermann may only assert these rights if the customer has been unsuccessfully set a reasonable deadline for payment beforehand or if such setting of a deadline is unnecessary according to the statutory provisions. In this case, the customer shall grant Köttermann or Köttermann's agents immediate access to the Reserved Goods and return them.

## **11. Final Provisions**

11.1 Unless otherwise agreed, the place of performance for delivery and payment shall be the registered office of Köttermann.

11.2 The courts of the Federal Republic of Germany with jurisdiction over Köttermann's registered offices shall have jurisdiction over all disputes arising from or in connection with contracts between the customer and Köttermann, as far as legally permissible. Köttermann shall, however, also be entitled to bring an action before the court locally responsible for the customer.

11.3 These Terms and Conditions and the contracts concluded between Köttermann and the customer are governed by the laws of the Federal Republic of Germany excluding their conflict of law provisions as well as the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

11.4 If Köttermann provides assembly, commissioning, maintenance, repair or similar services for the customer, the corresponding Delivery, Assembly and Installation Conditions of Köttermann shall apply additionally and with priority. These can be viewed on the Köttermann homepage [www.koettermann.com](http://www.koettermann.com).

**Contact details:**

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