

## Delivery, Assembly and Installation Conditions of the Köttermann GmbH

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### 1. Scope

1.1 The following delivery, assembly and installation conditions (hereinafter referred to as "**Conditions**") of Köttermann GmbH (hereinafter referred to as "**Köttermann**") apply to deliveries as well as to the assembly and installation of contractual products (hereinafter referred to as "**Contractual Services**"). As far as the transfer of ownership and/or delivery of contractual products is contractually agreed upon in addition to the Contractual Services within the framework of a purchase and/or delivery contract, the General Terms and Conditions of Sale and Delivery of Köttermann shall apply in addition to the Conditions.

1.2 These Conditions shall apply exclusively, unless otherwise expressly agreed in individual cases between Köttermann and the customer. Köttermann does not accept the customer's general terms and conditions of business, purchase and/or assembly, even if Köttermann does not expressly object to such. This shall also apply if Köttermann unconditionally performs the Contractual Services for the customer in knowledge of the customer's general terms and conditions of business, purchase and/or assembly.

1.3 These Conditions shall only apply to entrepreneurs (§ 14 of the German Civil Code), legal entities under public law or special funds under public law.

1.4 In the absence of a special agreement, a contract for the Contractual Services shall come into existence upon Köttermann's written confirmation of the customer's order. The written form of the order confirmation shall also be deemed fulfilled by text form by means of remote data transmission (e.g. e-mail) or fax.

1.5 Individual agreements with the customer made in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these Conditions. For this reason, information and agreements that were agreed in the course of awarding the contract and written down in the order confirmation shall also apply in principle. Subject to proof to the contrary, a written contract or written confirmation from Köttermann is authoritative for the content of such agreements.

1.6 If Köttermann provides a technical consultant for the purpose of supervising and coordinating assembly and installation, this shall not be a Contractual Service within the meaning of these Conditions and §§ 611 *et seq.* of the German Civil Code (service contract) shall apply in this respect.

### 2. Occupational Safety

2.1 Köttermann shall comply with the statutory provisions applicable at the place of performance when performing the Contractual Services. Should the statutory provisions change between the conclusion of the contract and the execution of the Contractual Services, Köttermann shall be entitled to compensation for any additional expenses and to adjustment of the contractual deadlines.

2.2 For his part, the customer shall comply with the statutory, official and professional association regulations and orders existing at the place of performance and shall take the necessary measures to prevent accidents and to protect Köttermann's personnel and property.

2.3 It is the customer's responsibility to inform Köttermann in writing about existing safety regulations at the place of performance and to carry out a safety briefing for Köttermann's personnel before the start of the performance of the Contractual Services on site. If these safety regulations provide for special protective equipment for Köttermann personnel, this shall be made available to the personnel.

2.4 Should one or more of the security requirements to be fulfilled by the customer at the place of performance not be fulfilled and not be remedied within a reasonable grace period despite written notification to the customer, Köttermann shall be entitled to suspend the Contractual Services until the security defect has been remedied. Köttermann is furthermore entitled, after prior notice, to withdraw its personnel from the place of performance and/or to terminate the contract or part of the contract affected by these conditions if there is a danger to life and limb for the affected employees within the scope of the assignment.

2.5 All costs incurred directly or indirectly by Köttermann as a result of the suspension or interruption of the Contractual Services for reasons for which the customer is responsible in accordance with section 2.4 shall be invoiced separately to the customer in full.

2.6 Times for special safety instruction sessions for Köttermann personnel must be communicated at the latest when the contract is awarded. Otherwise, such time shall be invoiced under provision of proof thereof according to actual expenditure and shall be borne by the customer.

### **3. Delivery Conditions**

3.1 In the event of a delivery of more than 5 cbm and/or the delivery of safety cabinets and/or the delivery of fume cupboards, the customer shall be obligated to complete the "Köttermann delivery checklist" and send it to Köttermann up to fourteen (14) working days prior to loading.

3.2 The forwarding vehicle shall be able to reach and leave the unloading point without any danger. This requires an access route that is paved sufficiently and can be driven upon by heavy trucks without restriction. If this condition is not met, the delivery can be interrupted at the customer's expense and then be rescheduled.

3.3 The direct access to the building must have a minimum height of 4.00 m and a width of 2.60 m in order to avoid damage to the building (e.g. awning).

3.4 The transport route from the place of unloading to the place of use shall be free from obstacles and obstructions of any kind which prevent proper transportation and shall have a clear width of at least 1.30 m and a clear height of at least 2.10 m.

3.5 If there is an elevator in the building, the vertical transport shall, if possible, take place by this way. The protection of the elevator (cladding) shall be provided by the customer. If costs are incurred for the use of the elevator, these shall be borne by the customer.

3.6 Any work and transport under clean-room conditions or into radiation protection areas are not included in Köttermann's scope of work and shall be discussed in detail during the preparation phase. The special requirements shall be clarified in advance and without prior consultation may lead to an interruption of the delivery at the customer's expense.

### **4. Conditions of Premises upon Delivery**

4.1 The contractual products delivered by Köttermann are of high quality. As they can quickly be damaged by other trade/construction teams, the customer's premises must be completed and swept clean by the day of delivery. No other trade/construction teams are allowed to operate there. This shall apply in particular to work on flooring, walls and ceilings. The customer shall ensure that at the time of delivery and during installation, a contact person is present or available who is informed about the project or the work of the other trade/construction teams.

4.2 After delivery of the contractual products, the customer shall ensure that these rooms are locked. In addition, the customer shall take the measures he would take to protect his own property in order to protect the contractual products delivered. In the event of damage to or loss of the product, the cost of replacement shall be borne by the customer.

4.3 If the delivered contractual products cannot be taken directly to the installation site because the rooms do not yet meet the requirements of section 4.1, interim storage will generally take place in the customer's building. These rooms must also be sufficiently large, suitable, clean, dry and lockable. The later transport will then take place at the expense of the customer. In connection therewith, the customer shall reimburse Köttermann for the actual additional costs incurred, including the costs for waiting time, wage supplements and any additional travel to and from the site by Köttermann's assembly personnel.

4.4 The customer shall provide Köttermann's assembly personnel with parking spaces and appropriate common rooms (including appropriate sanitary facilities) free of charge.

## **5. Assembly, Installation**

5.1 The installation and assembly of all individual parts of the contractual products or other objects shall be carried out in accordance with Köttermann's assembly drawings as approved by the customer.

5.2 All fully assembled units of the contractual products or other objects (laboratory units) shall be aligned and a preliminary cursory cleaning performed by Köttermann. The fine cleaning shall be carried out by the customer. Köttermann will properly dispose of the packaging material.

5.3 Exhaust air ducts and their connection are not included in the standard scope of delivery unless they have been expressly agreed contractually.

5.4 All sanitary inlet and outlet pipes within the laboratory facilities shall be manufactured by Köttermann in accordance with the recognised rules of technology within the scope of assembly, in as far as this work has been expressly contractually agreed between the parties. The cable routing within the laboratory equipment ends at the on-site transfer points, which will be agreed in advance between Köttermann and the customer. The customer shall set appropriate shut-off valves at the transfer points. Additional expenses due to deviating transfer points or transfer types shall be borne by the customer. The customer shall ensure that drinking water protection is provided by the customer via a ball shut-off valve, if necessary.

5.5 All electrotechnical wiring within the laboratory facilities shall be manufactured by Köttermann in accordance with the recognised rules of technology within the scope of assembly, in as far as this work has been expressly contractually agreed between the parties. The electrotechnical cable routing within the laboratory facilities ends in the sub-distribution boards of the laboratory furniture. The length of the electrical supply cables for the sub-distributors can be agreed in advance between Köttermann and the customer. However, it shall be at least 5 m. Additional expenses due to deviating transfer points and excessively short supply cables shall be borne by the customer.

5.6 The connection of the media supply and disposal within the laboratory facilities to the on-site transfer points shall be carried out by Köttermann for the media which are part of the respective contract. The connection shall be made in accordance with the recognised rules of technology and, if prescribed, shall be recorded. Additional expenses due to deviating transfer points shall be borne by the customer.

5.7 The inlet and outlet air ducts shall be laid in accordance with the recognised rules of technology. Ceilings and wall openings are to be prepared by the customer and then professionally closed again by him. The materials, equipment and scaffolding required for this work are also part of the customer's scope of services.

5.8 Changes, special and additional services which are not included in the scope of performance of the agreed contractual services shall be invoiced via assembly reports kept separately, that will be countersigned by the customer, in accordance with Köttermann's currently valid price list.

5.9 If the Contractual Services are delayed due to circumstances for which the customer is responsible, the customer shall reimburse Köttermann for the additional costs actually incurred in this connection, including the costs for waiting time, wage surcharges and additionally necessary travel to and from the site by Köttermann's assembly personnel. This also shall apply

in particular in the event that the commissioning of the products cannot take place because media provided by the customer (e.g. exhaust air, electricity, etc.) are not available in full working order.

5.10 Fire alarm systems existing on site must be deactivated during assembly in the working areas. Otherwise, possible dust development can lead to false alarms for which no liability can be assumed. The customer shall ensure adequate fire protection exists during this period.

## **6. Customer Cooperation**

6.1 The customer shall support Köttermann's personnel in the performance of the Contractual Services.

6.2 The customer shall be obligated to draw Köttermann's attention to special legal, official and other regulations at the place of performance which relate to the execution of the Contractual Services. He shall be responsible for obtaining official approvals, if necessary, so that the Contractual Services can be performed undisturbed. This shall apply in for particular hazardous situations. The customer shall bear the risk of delay or refusal of these approvals.

6.3 Without Köttermann's express written consent, the customer shall not be entitled to use Köttermann's personnel for work that is not part of the contract. Köttermann does not accept any liability for work carried out without special instructions from Köttermann on the instructions of the customer, nor shall Köttermann bear any costs incurred as a result.

6.4 The customer shall make available the necessary infrastructure as provided for in these Conditions and provide Köttermann with the necessary information regarding the operational structure and premises.

6.5 The customer's technical assistance must guarantee that the Contractual Services can be started immediately after the arrival of Köttermann's personnel and can be carried out without delay until acceptance by the customer. If special plans or instructions from Köttermann are required, Köttermann shall make them available to the customer in good time.

6.6 The workers provided by the customer shall follow the instructions of Köttermann's assembly manager. Köttermann accepts no liability for these workers. If the workers provided by the customer have caused a defect or damage as a result of instructions from the installation supervisor, the provisions in section 10 shall apply accordingly.

## **7. Deadlines and Delays**

7.1 The duration of the Contractual Services is materially dependent on the conditions at the place of performance and the support provided by the customer. In as far as no fixed date within the meaning of section 7.2 has been agreed, all information on the expected duration of the Contractual Services shall therefore constitute non-binding performance dates.

7.2 If a fixed date has been agreed for the performance of the Contractual Services, the following shall apply: The commencement of the period requires that all commercial and technical questions have been clarified and that the customer has fulfilled all obligations incumbent upon him prior to the commencement of the Contractual Services (e.g. provision of the necessary official certificates and approvals, payment of an agreed down payment). If this is not the case, the period shall be extended accordingly. The deadline shall be deemed to have been met if the Contractual Services are ready for acceptance by the end of the deadline. The Contractual Services shall also be deemed to have been completed if only insignificant parts are missing or insignificant reworking is necessary, provided that operational readiness is not impaired.

7.3 If the Contractual Services are delayed due to omitted or not properly performed services of the customer, e.g. violation of the obligations according to sections 2 and 6, the deadline shall be extended accordingly. This shall also apply if such circumstances occur after Köttermann is in default of performance. The costs incurred by the delay shall be borne by the customer. If the customer does not comply with his obligations, Köttermann shall also be entitled, but not obliged, after setting a deadline, to carry out the actions incumbent on the customer in his place and at his expense. Additionally, the statutory rights and claims of Köttermann remain unaffected.

7.4 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 the Contractual Services 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.

7.5 If the customer suffers damage as a result of Köttermann's delay, he is entitled to demand a lump-sum compensation for the delay. It shall amount to 0.5 % for each full week of delay, but in total not more than 5 % of the remuneration attributable to the Contractual Services.

## **8. Acceptance**

8.1 Köttermann will inform the customer of the completion of the Contractual Services in writing or by e-mail. The customer shall examine Köttermann's Contractual Services immediately and declare acceptance in text form in the manner described in section 8.3 within a reasonable period of time, at the latest within twelve (12) working days after receipt of the notice of completion (Acceptance Deadline). The relevant Contractual Services shall be deemed to have been accepted if (i) the Customer has not declared acceptance within the agreed Acceptance Deadline and has not provided notification of any defects that prevent acceptance or (ii) the Customer uses the Contractual Services and/or products productively or (iii) the Customer has paid for the Contractual Services in full. If the Customer is in default of acceptance, the Customer shall confirm this in writing upon Köttermann's request.

8.2 At Köttermann's request, self-contained parts of the Contractual Services can be accepted separately.

8.3 Acceptance shall be recorded in writing in a joint protocol signed by both parties. Any reservations due to recognisable defects shall be recorded in the report, as shall any objections by the customer. If there is a non-essential defect, the customer cannot refuse acceptance. If the Contractual Services prove not to be in accordance with the contract (recognisable defects), the provisions of section 9 shall apply with regard to claims for defects and liability. Each party shall receive a copy of the report.

8.4 The written form required for acceptance in accordance with the above section 8.3 shall also be met by an electronic signature of the parties via a signature pad. The same applies to the signing of test reports by the parties within the scope of the installation and assembly of the contractual products or other objects.

8.5 Köttermann's liability for recognisable defects shall cease upon acceptance, unless the customer has reserved the right to assert a specific defect.

8.6 The benefit and risk of the Contractual Services shall pass to the customer upon notification of the completion of the Contractual Services.

## **9 Warranty, Warranty Claims, Liability**

9.1 Defects in the Contractual Services shall be remedied in accordance with the following provisions.

9.1.1 Köttermann shall remedy recognisable defects in as far as they have been properly notified in the course of acceptance in accordance with section 8.3.

9.1.2 Defects in the Contractual Services shall be reported to Köttermann in text form immediately after discovery.

9.1.3 Köttermann shall not have to remedy the defect if it is irrelevant for the interests of the customer or is based on a circumstance which is attributable to the customer himself.

9.1.4 Köttermann shall remedy defects in the Contractual Services at its own discretion by eliminating the defect free of charge for the customer or by new production (jointly referred to as "Specific Performance").

9.1.5 If defects become apparent which cannot be remedied immediately through no fault of Köttermann, Köttermann shall only be liable for those expenses which would have been incurred if the defect had been remedied immediately. If the customer prevents Köttermann from remedying identified defects, the customer shall be liable for any additional expenses incurred by Köttermann as a result.

9.1.6 If Köttermann allows a reasonable period for Specific Performance to elapse unsuccessfully without remedying the defect, if Köttermann refused to perform the Specific Performance or such does not lead to the remedy of the defect and if the customer cannot reasonably be expected to accept further Specific Performance, the customer shall be entitled to further statutory warranty rights, in particular the right to remedy the defect himself or have it remedied by a third party and to demand reimbursement of the costs incurred from Köttermann. The same shall apply in cases of danger to operational safety and to the prevention of disproportionately large damage, in which cases Köttermann shall be informed immediately. Köttermann shall under no circumstances be liable for damages resulting from modifications and/or repair work carried out by the customer or third parties commissioned by the customer.

9.1.7 The customer shall grant Köttermann the necessary time and opportunity to effect Specific Performance to an appropriate extent.

9.2 Köttermann shall bear or reimburse the expenses necessary for the purpose of inspection and 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 and this does not result in a unreasonable burden. If there is no defect, Köttermann can demand compensation from the customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the customer was not able to recognize the non-existing defect.

9.3 The assembly personnel of Köttermann may only install and erect parts of foreign origin with the express permission of Köttermann. Köttermann accepts no liability for the proper functioning of these parts. The installation work is carried out to the best of the knowledge and judgment of the installation personnel.

9.4 The warranty shall be excluded if the customer or third parties make changes to the object of the Contractual Services without Köttermann's written consent, do not comply with Köttermann's instructions in preparatory or self-performed work or if the customer, despite being aware of a defect, does not immediately take suitable measures to mitigate the damage, although this was possible and reasonable for him.

## **10. Liability; Limitation of Liability**

10.1 If a contractual product delivered by Köttermann or another product is damaged through Köttermann's fault during the performance of the Contractual Services, Köttermann shall, at its discretion, repair or replace it at its own expense. If objects on which Contractual Services are performed are damaged or destroyed for reasons for which Köttermann is not responsible, Köttermann retains the right to the agreed remuneration.

10.2 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.

10.3 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.

10.4 Liability in the event of a breach of a Cardinal Obligation pursuant to section 10.3 of these Conditions shall be limited in amount to the foreseeable, typically occurring damage.

10.5 The limitations of liability resulting from sections 10.3 and 10.4 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 a quality as well as for claims of the customer according to the Product Liability Act.

## **11. Limitation Period**

11.1 To the extent permitted by law, all claims of the customer - on whatever legal grounds - shall become statute-barred after twelve (12) months. In all other respects, the statutory periods shall apply, in particular if Köttermann performs the contractual services on a building and thereby causes its defectiveness.

11.2 If new rights of the customer arise due to quality defects within the scope of Köttermann's remedy of defects, all claims arising from these rights shall become statute-barred at the latest six (6) months after the remedy of defects, whereby such claims shall be limited exclusively to defects arising directly in connection with the remedy of defects.

## **12. Prices, Terms of Payment**

12.1 The Contractual Services shall be invoiced according to expenditure in accordance with Köttermann's current price list, unless a fixed price has been expressly agreed.

12.2 The prices are exclusive of the applicable statutory value added tax.

12.3 Changes in prices are permissible if there are more than four (4) months between the conclusion of the contract and the beginning of the Contractual Services. In this case Köttermann is entitled to increase the price for the Contractual Services 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.

12.4 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.

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

12.6 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.

12.7 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 Contractual Services 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.

12.8 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.



### **13. Special Conditions for Construction Works**

For construction services in Germany, the provisions of the VOB/B (German Construction Contract Procedures) shall have precedence, in as far as these have been expressly agreed between the parties in the respective contract.

### **14. Miscellaneous**

14.1 Declarations made by Köttermann personnel shall only be binding on Köttermann if they have been confirmed in writing or in text form by a person authorised by Köttermann.

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

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

14.4 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).

14.5 If and in as far as these conditions do not expressly stipulate otherwise, the General Terms and Conditions of Sale and Delivery shall apply accordingly to Köttermann's deliveries and other services. These can be viewed on the homepage of Köttermann ([www.koettermann.com](http://www.koettermann.com)).

#### **Contact details:**

Köttermann GmbH  
Industriestraße 2  
31311 Uetze