

Conditions of Purchase for Kocher Regalbau GmbH, status 01/09/2009

Applicable in business dealings with entrepreneurs, legal persons under and special funds under public law.

1. General Info

- 1.1 Our conditions of purchase apply exclusively. Terms of Service of the supplier, that are contrary or deviating from our Conditions of Purchase are only accepted if we have expressly agreed to them in writing. The acceptance of goods or services from the supplier (hereinafter referred to as subject of the contract) or their unconditional payment does not mean that the Conditions of Purchase of the supplier are valid, even if these are positively known to us.
- 1.2 Our Conditions of Purchase also apply to all future business with the supplier.
- 1.3 The INCOTERMS in the version valid at the time of the contract conclusion shall apply to the interpretation of commercial clauses.

2. Contract conclusion and amendments

- 2.1 Orders, statements and delivery schedules as well as their changes and additions must be made in writing, in text or electronic form.
- 2.2 Verbal agreements of any kind - including subsequent changes and additions to our Conditions of Purchase - require written confirmation from us to be effective.
- 2.3 Quotations are binding and not to be reimbursed unless otherwise expressly agreed.
- 2.4 If the supplier does not accept the order within two weeks of receipt, we are entitled to revoke it.
- 2.5 Delivery schedules within the framework of order and release planning become binding if the supplier does not object within two working days of receipt.
- 2.6 Ordering standards and drawings specified by us, including tolerances, are binding. By accepting the order, the supplier acknowledges that he has informed himself of the type of execution and the scope of the performance by reviewing the existing plans. In the case of obvious mistakes, typographical errors and miscalculations in the order itself as well as in the documents, drawings and plans submitted by us, there is no liability for us. The supplier is obliged to inform us about such errors, so that our order can be corrected and renewed. This also applies to missing documents and drawings.

3. Delivery, delivery delay

- 3.1 Deviations from our order are only permitted after our written consent.
- 3.2 Agreed dates or deadlines specified in our order are binding. Compliance with the delivery date or the delivery period is the receipt of goods by us. If delivery is not "ex works" (DDU or DDP according to Incoterms 2000) or agreed to a specific place of delivery, the supplier must make the goods available in good time considering the time to be agreed with the freight forwarder.

- 3.3 If the supplier has taken over the installation or assembly and nothing else has been agreed, the supplier shall bear all necessary additional costs, such as travel expenses, provision of the tool and releases, under the reserve of possible deviating regulations.
- 3.4 If agreed deadlines are not met, then the statutory provisions apply. If the supplier foresees difficulties in terms of production, supply of input materials, adherence to the delivery date or similar circumstances that could hinder him on the timely delivery or on the delivery in the agreed quality, the supplier must notify our ordering department immediately.
- 3.5 In the case of delivery delay by the supplier, we are entitled to demand a damage flat-rate in the amount of 0.2% of the order value per working day, but not more than 5% of the order value in total, unless the supplier proves that because of the delay no or a much lower damage has occurred. Further statutory claims, in particular rescission and / or compensation due to non-performance remain reserved.

The unconditional acceptance of the delayed delivery or service does not constitute a waiver of the claims for compensation due to us for the delayed delivery or service. This applies until full payment of the fee owed by us for the concerned delivery or service.

- 3.6 In the event of delay by the contractor, the client may also, after the expiry of a reasonable period set by him, render the deliveries and services not yet rendered by the contractor or have them performed by a third party at the expense of the contractor. If documents required from the contractor are required, he must hand them over to the client without delay. If protective rights preclude the creation of the machine, the system or its parts, or the provision of services owed by the contractor, by the client or a third party, the contractor is obliged to immediately grant a corresponding exemption from these rights.

If the contractor fails to meet the agreed deadlines, the client may withdraw from the contract after the expiry of a reasonable deadline set by him, subject to § 323 (6) BGB. A contractual penalty that has become due until the date of withdrawal remains unaffected.

- 3.7 Partial deliveries are generally inadmissible, unless we have expressly agreed to them or they are reasonable.
- 3.8 The supplier must package the goods in an appropriate manner and ensure that the packaging is provided with all legally or officially prescribed or contractually agreed markings and that the accompanying documents, certificates of origin, declarations of conformity and certificates are included.

4. Termination

- 4.1 The customer is entitled to terminate the contract for goods / services at any time. The Contractor shall be entitled to demand the agreed remuneration based on his or her saved expenditures and any other use of his labour force.
- 4.2 The client is also entitled to a right of termination because of a substantial breach of contract by the contractor. The deliveries / services performed by the contractor until then will only be invoiced at contract prices insofar as they can be used by the client as intended. Billing is on a contract basis. Any damage to be compensated to the client will be considered in the settlement. The same applies to a forfeited contractual penalty.

5. Force majeure

Force majeure, labour disputes, non-operational disruptions, riots, official measures and other unavoidable events release us from the obligation to timely acceptance for the duration of their existence. During such events, as well as within two weeks of their expiration, we are entitled, without prejudice to our other rights, to step back from the contract in whole or in part, provided that these events are not insignificant and our needs are significantly reduced as a result of the need for other procurement.

6. Dispatch indication and invoice

The information in our orders and delivery schedules apply. The invoice must be sent in duplicate, stating the invoice number and other allocation characteristics, to the address printed on the invoice; it may not be attached to the package.

7. Pricing and transfer of risk

Unless otherwise agreed, prices are free of charge at the construction site (DDP according to Incoterms 2000) including packaging. Sales tax is not included. The supplier shall bear the material risk until acceptance of the goods by us or our agent at the place to which the goods are to be delivered according to the order or on which the service is to be performed.

8. Terms of payment

Unless otherwise agreed, the invoice shall be settled either within 14 days with a deduction of 3 % discount or within 30 days without deduction, starting from the due date of the payment claim and receipt of both the invoice and the goods, or provision of the service, whereby the condition for our payment is that the supplier has previously given us all the documents owed under the contract in full and legibly (for example, certificates, documentation, test reports, certificates of origin, declarations of conformity, etc.). Payment is subject to invoice verification.

9. Examination and acceptance

9.1 Assembly and factory services

9.1.1 For the contractual deliveries / services, a joint acceptance is agreed as valid. This takes place at the place of receipt indicated by the client. The contractor must ask in writing for the determination of the acceptance date. The acceptance shall take place immediately and in the case of machines and systems requiring a prior trial operation within a period of time requested by the contractor of no earlier than 4 weeks and no later than 3 months after commencement of the trial operation.

Within the scope of existing possibilities, the machine or plant can also be used for production during trial operation. The contractor is responsible for the material costs incurred at the time of acceptance, the contractor and the client bear the personal acceptance costs incurred by themselves.

9.1.2 If it appears during the acceptance test that the service has not been performed in accordance with the contract, the contractor must immediately establish the condition agreed upon in the

contract and, at the latest within 3 months, request a repeat of the acceptance. All costs incurred in repeating the acceptance test shall be borne by the contractor.

- 9.1.3 If defects are found which do not affect the performance and function of the machine / plant and the safety and health of the employees, the acceptance may take place subject to the immediate elimination of these defects. A reasonable amount from the final payment will then be withheld until disposal. The prerequisite for acceptance, however, is in any case the conformity of the machine / system with the machine regulation 9. GPSGV.
- 9.1.4 The acceptance is confirmed to the contractor with the acceptance protocol of the client.
- 9.2 Delivery of goods
 - 9.2.1 The supplier is obliged to comply with the technical data required for its deliveries, the applicable accident prevention and VDE regulations, the applicable statutory provisions and the latest recognized technical regulations.
 - 9.2.2 In order to ensure the quality of its deliveries, the supplier must carry out a quality inspection that is suitable for the type and scope.
 - 9.2.3 For dimensions, quantities and quality, the values determined in our incoming goods inspection and quality inspection are decisive.
 - 9.2.4 The supplier waives the objection of late notification of defects and unconditional acceptance.

10. Warranty claims and recourse

- 10.1 We are not obliged to check the goods after their receipt. We endeavour, as far as and as soon as this is possible in the ordinary course of business, to examine the goods for freedom from defects, in particular for accuracy, completeness and suitability, in the form of random samples. The application of § 377 HGB is excluded as far as permissible.

Defects are reported immediately after discovery. In this respect, the supplier waives the objection of the delayed notice of defects. In any case, a complaint is timely within thirty days of discovery of a defect or other cause for complaint.
- 10.2 The statutory provisions on defects of quality and title shall apply unless otherwise provided below.
- 10.3 The right to choose the type of supplementary performance is ours. The supplier may refuse the type of supplementary performance chosen by us if it is only possible with disproportionate costs.
- 10.4 If the supplier does not start remedying the defect immediately after our request, then in urgent cases, in particular to avert acute danger or avoid major damage, we have the right to do so ourselves or to have it done by third parties at the expense of the supplier.
- 10.5 In the case of defects of title, the supplier also indemnifies us from any existing claims of third parties, unless he is not responsible for the legal defect.
- 10.6 Claims for defects become time-barred - except in cases of malice - in three years, unless the item has been used in accordance with its customary use for a building and has caused its defectiveness. The period of limitation begins with the delivery of the subject matter of the contract (transfer of risk).

- 10.7 If the supplier fulfils his supplementary performance obligation by replacement delivery, the period of limitation begins to run anew for the goods delivered as replacement, unless the supplier has expressly and correctly reserved the subsequent performance, made the replacement only as a matter of goodwill, to avoid disputes or in the interest of continuing the supply relationship.
- 10.8 If costs incur as a result of the defective delivery of the subject of the contract, in particular transport, travel, labour, and material costs, the supplier shall bear these costs.
- 10.9 The supplier guarantees that all deliveries and services are free from third-party property rights, in particular that patents, licenses or other proprietary rights of third parties within Germany are not infringed by the delivery and use of the relevant delivery and service items.

11. Product liability

- 11.1 In the event that we are claimed on the basis of product liability, the supplier is obliged to release us from such claims if and insofar as the damage was caused by a defect in the contractual object delivered by the supplier. In cases of liability based on fault, however, this only applies if the supplier is at fault.

If an error occurs in a part delivered by or a service provided by the supplier, it is presumed that the error was exclusively the responsibility of the supplier.

Insofar as the cause of the damage lies within the responsibility area of the supplier, he bears the burden of proof to that extent.

- 11.2 In the cases of Sec. 11.1 the supplier must cover all costs and expenses, including the costs of any legal action.
- 11.3 Otherwise, the statutory provisions apply.
- 11.4 Before a product recall that is wholly or partly the result of a defect in the subject matter of the contract, we will inform the supplier to give him the opportunity to cooperate with him and discuss efficient implementation unless the supplier is informed or the involvement is not possible because of special urgency. Insofar as a recall is the consequence of a defect in the object of the contract delivered by the supplier, the supplier bears the costs of the recall.

12. Execution of work

- 12.1 Persons who carry out work on the factory premises or at the installation site in fulfilment of the contract must observe the provisions of the respective company regulations. The liability for accidents that occur to these persons on the factory premises or at the installation site is excluded unless this was caused by intentional or grossly negligent breach of duty by our legal representatives or vicarious agents.
- 12.2 The safety and accident prevention measures to be taken at the place of performance for the purpose of securing the supply or service provision are to be performed by the supplier / contractor on his own responsibility. In this respect, we have no obligation to notify, supervise or monitor. The supplier / contractor indemnifies us from all claims of third parties resulting from a breach of this duty of care.

- 12.3 The supplier, who has to provide services or work in the context of a contract with us on our assembly premises, is obliged to maintain an adequate liability cover for itself, its legal representatives, vicarious agents and assistants, to hold an assembly insurance appropriate to the respective scope of the order and to ensure that its legal representatives, vicarious agents and assistants have sufficient insurance against occupational accidents.

13. Drawings and other documents, tools

- 13.1 Before starting work, the contents of all drawings must be discussed with the client. After completion of the work, the contractor shall provide to the client the drawings, calculations and other technical documentation relating to the actual execution in the required number and execution until the time of acceptance at the latest. They must be brought up to date as soon as subsequent changes are made by the contractor. The contractor is obliged to transfer ownership to the client free of charge. Intellectual property is not affected by this. The client or third parties may use them free of charge for the execution of maintenance and changes as well as for spare parts production.
- 13.2 The client's consent to drawings, calculations and other technical documentation shall not affect the responsibility of the contractor for the supplies and services. Insofar as the contractor does not object in writing, this shall also apply to suggestions and recommendations of the client as well as to changes between contractor and client of the client, and for changes between contractor and client.
- 13.3 All execution documents, devices, tools, models and other objects, which the contractor can use, remain the property of the client. The ownership of tools and other objects, which are paid by the client, passes to the client.
- 13.4 The aforementioned objects may neither be scrapped nor be made accessible to third parties - e.g. for the purpose of manufacturing. They also may not be used for other than the contractually agreed purpose - e.g. the delivery to third parties. They must be carefully stored by the contractor at its expense during the execution of the contract.
- 13.5 The client reserves all rights to drawings and products manufactured according to his instructions as well as to procedures developed by him.

14. Provision

Materials, parts, containers and special packaging provided by us remain our property. These may only be used as intended. The processing of materials and the assembly of parts are done for us. It is understood that in proportion of the value of the supplies to the value of the entire product, we are co-owners of the products manufactured using our materials and parts, which are to this extent kept by the supplier for us.

15. Liability

- 15.1 We are not liable for damages that we, our legal representatives or vicarious agents caused by simple negligence. This shall apply irrespective of the legal nature of the asserted claim, in particular from delay, other breach of duty or under negotiation. This limitation of liability does not apply to damages resulting from injury to life, limb or health and from the violation of essential

contractual obligations. In the case of a breach of non-essential contractual obligations, we are liable for pecuniary losses only to the extent and in the amount at which they were expected to occur upon conclusion of the contract.

- 15.2 The supplier shall be liable for all damages caused by negligence or intent on the part of the supplier, his legal representative or vicarious agent, unless the law prescribes no-fault liability.

16. Documents and secrecy

- 16.1 All business or technical information made available by us (including features derived from any objects, documents or software transferred, and any other knowledge or experience) are, as long as and to the extent that they are not publicly known, to be kept secret from third parties and only be made available to such persons in the supplier's own company, who must necessarily be consulted for the purpose of delivery to us or the performance of assembly services for us and who are also obliged to maintain secrecy; they remain our exclusive property. Without our prior written consent, such information - except for deliveries to us - may not be reproduced or used commercially. At our request, all information originating from us (including any copies or records made, if any) and items lent shall be returned to us or destroyed immediately and completely.

We reserve all rights to such information (including copyrights and the right to register industrial property rights, such as patents, utility models). Insofar as these have been made available to us by third parties, this reservation of rights also applies to these third parties.

- 16.2 Products manufactured according to documents designed by us, such as drawings, models and the like, or according to our confidential information or with our tools or copied tools, may not be used by the supplier, or offered or delivered to third parties.

17. Export control and customs

Proofs of origin requested by the client will be provided to the contractor with all necessary information and duly signed. The same applies to VAT-related evidence of foreign and intra-community deliveries.

The contractor will inform the client immediately if a delivery is wholly or partly subject to export restrictions under German or other law.

18. Place of fulfilment

Place of fulfilment is the place to which the goods are to be delivered according to the order or to which the service is to be provided.

19. General provisions

- 19.1 Should a provision of these conditions and the further agreements be or become ineffective, the validity of the remaining conditions shall not be affected thereby. The contracting parties are obliged to replace the ineffective provision by a provision which is as similar as possible when taking economic success into consideration.

- 19.2 The contractual relationship is governed exclusively by German law, excluding the UN Sales Convention (CISG) and the conflict of laws, even if the supplier is domiciled outside Germany and / or the delivery or service of the supplier must be made or must be provided outside the Federal Republic of Germany.
- 19.3 The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationships on which these conditions of purchase are based is Stuttgart. We further have the right to sue the supplier at our discretion at the court of his place of business or branch or at the court of the place of performance.

As of 10/2008