

**1. Scope**

- 1.1 Our terms and conditions of purchase shall apply exclusively.
- 1.2 We do not recognize any supplier's terms and conditions that are conflicting or deviating from our terms and conditions unless we have expressly accepted their validity in writing. Our terms and conditions of purchase shall apply also in the event that we, upon knowledge of conflicting or deviating terms set by the supplier, accept delivery without reservation.
- 1.3 Our terms and conditions of purchase shall only apply vis-à-vis enterprises as defined by § 14 BGB (German Civil Code), if the contract is part of the operation of the enterprise, as well as vis-à-vis legal persons under public law and special funds under public law as defined by § 310 par. 1 BGB (German Civil Code).
- 1.4 Our terms and conditions of purchase shall also apply to all future business with the supplier.

**2. Conclusion of a Contract, Offer Documents**

- 2.1 The supplier shall be obliged to accept our order within a two-week period, and to send us a corresponding order confirmation. If the supplier fails to do this, we shall be entitled to cancel our order even if our order was based on a binding offer of the supplier.
- 2.2 The order confirmation must show the price, a binding delivery date, as well as all numbers and references stated in our order.
- 2.3 Offers, designs, specimens and samples provided by the supplier shall be free of charge for us and shall not create any liabilities for us.
- 2.4 Unless otherwise agreed, we shall not pay any remuneration or compensation for visits or for the preparation of offers, projects etc.
- 2.5 We shall be entitled to demand technical alterations to the goods and/or changes in the delivery times to an extent that can be reasonably expected of the supplier. In such event, reasonable and amicable arrangements have to be made in view of any effects, in particular with regard to additional costs or shortfalls, as well as with regard to delivery dates.
- 2.6 We reserve title to and copyright of illustrations, drawings, calculations and other offer documents; they may not be disclosed to third parties without our express written consent. They shall be used exclusively for manufacture based on our order; after the order has been processed, they have to be returned to us without us having to ask and free of costs. They shall be kept secret from third parties.

**3. Prices and Terms of Payment**

- 3.1 The prices quoted by us shall be binding; this shall also apply to blanket purchase orders for the complete duration of the agreement. If prices are not quoted the supplier's current list prices with the customary discounts shall apply.
- 3.2 All prices shall be understood CPT (carriage paid to the place of destination Hattingen, unless otherwise agreed) in line with Incoterms 2000 to the delivery address given by us, plus statutory turnover tax and packaging, while we shall be entitled to specify the type of packaging, the means of transport, the transport route and the transport insurance.
- 3.3 When we accept early deliveries, the due date shall be based on the agreed delivery date. Should the invoiced goods reach us later than the invoice, the date of receipt of the goods shall be held to be the date of receipt of the invoice.
- 3.4 Unless otherwise agreed, we shall make the payments at our discretion either within 14 days of receipt of the invoice with a deduction of a 3% discount or within 30 days of receipt of the invoice net; the term, however, shall not commence before the supplier has effected its complete performance.
- 3.5 Two copies of the invoice shall be sent to us concurrently with the dispatch of the goods, however, under separate cover. Each invoice must contain the order number, the part number and the date when the order was placed by Köppern. Each invoice must satisfy the applicable statutory requirements, in particular, it must contain the complete name and the precise address of the enterprise supplying goods or providing services, the tax number or sales tax identification number, the consecutive invoice number, date of issue of the invoice, quantity and type of the items to be delivered or type of the service to be rendered. Invoices which are not made out properly shall be held not to have been issued.
- 3.7 In those cases in which delivery or service may be exempt from VAT, the supplier shall be obliged to furnish the required supporting documents or to assist in furnishing them. For deliveries within the European Union the supplier has to communicate its sales tax identification number, to prove its entrepreneurial status and to assist in furnishing accounting and documentary proof of export.
- 3.8 In the event of a defective delivery we shall be entitled to withhold payment based on the proportional value until due performance. On the other hand, when we effect payments this does not mean that we recognize the delivery as complying with the contract.
- 3.9 Without prior written consent - which must not be unreasonably withheld - the supplier shall not be entitled to assign its receivables from us or have them collected by third parties.

**4. Delivery Time and Delay in Delivery**

- 4.1 When the supplier realizes that for any reasons an agreed delivery time cannot be complied with, the supplier has to notify us in writing of this situation stating the reasons and the expected duration of the delay.
- 4.2 Should the agreed delivery time not be complied with, we shall be entitled, upon expiry of a reasonable period of grace granted by us, to withdraw from the contract without prejudice to any further legal claims. Should the supplier be responsible for the delay, we shall be entitled, at our discretion, to claim damages incurred by us as a result of the delay, or, after expiry of the above-mentioned period, to claim damages instead of performance or reimbursement of expenses incurred in vain.
- 4.3 Force majeure, industrial disputes or other circumstances beyond the control of and not foreseeable by the supplier shall release the supplier from its obligations to perform only for the duration of the disturbance and within the scope of its effect. To the extent to which this can be reasonably expected, the supplier shall be obliged to immediately communicate the required information and to adapt its obligations to the changed circumstances in good faith. We shall be released in whole or in part from the obligation to accept the delivery/service ordered and shall be entitled to withdraw from the contract in this respect, should the delivery/service, as a result of the delay caused by such circumstances, no longer be utilizable for us from an economic point of view.

**5. Delivery, Passing of the Risk and Packaging**

- 5.1 We shall accept partial deliveries only by express agreement. In the event of agreed partial deliveries, the residual quantity is to be specified.

- 5.2 Two copies of a delivery note must be enclosed with the goods, which note, in addition to a detailed designation of the scope of delivery as per item, type and quantity etc., shall contain our detailed order information (order number, part number and date of order). Should the supplier fail to provide such information, delays in processing the delivery shall be unavoidable, for which delays we cannot be held responsible.
- 5.3 The risks shall be passed at the delivery address stated by us.
- 5.4 Place of performance with regard to the obligation of the supplier to take back packaging in line with § 4 Packaging Directive shall be the place of delivery of the goods.
- 5.5 To the extent that it is reusable, packaging for which we were charged shall be credited to us at the full amount charged when it is returned. The credit note shall always be submitted in a single copy stating the invoice in which the amount was charged.

## 6. Defect of Quality and Defect of Title

- 6.1 All items delivered by the supplier and all services rendered by the supplier must comply with the state of the art, the relevant legal provisions and the regulations and guidelines laid down by authorities, employers' liability insurance associations and trade associations. Standards generally recognized on an international level, as, e.g., DIN, ISO, IEC, EN, VDI, VDE, must be observed. Should deviations from these regulations be required in a particular case, the supplier must obtain our prior written consent. In addition, the regulations of Köppern shall apply, which regulations have been made known to the supplier.
- 6.2 The supplier shall expressly guarantee that it will meet the requirements laid down in item 6.1, and that it will adhere to other agreements or promises made by the supplier with regard to the quality of the delivery items.
- 6.3 Should the supplier have reservations with regard to the type of design desired by us, it has to immediately notify us in writing of these reservations.
- 6.4 Acceptance of delivery shall always take place with the reservation of a quantity and quality control. We shall be obliged to check the goods for possible defects within a reasonable time. A notice of defects shall be deemed on time when, in the case of recognizable defects, it is received by the supplier within a period of 20 working days starting from delivery, or, if it was not possible to identify the defect during a proper check, within a period of 20 working days starting from its discovery. We expressly draw attention to the circumstance that some goods purchased by us, in part in their original packaging, have to be redispached by us to the customer where the goods have to be installed. If this is the case, upon receipt of the goods we are only obliged to identify and make a complaint in respect of damaged packaging. An obligation to control beyond such check shall only exist for us at the point in time when the goods are installed at the final customer's premises. We expressly reserve the right to decide whether an excess delivery complies with the contract. Should, in the event that goods are defect, subsequent performance by the supplier fail, there shall be no duty to examine and make a complaint in respect of a defect immediately on receipt of the goods in line with § 377 HGB (Commercial Code) with regard to services rendered by the supplier for the purpose of subsequent performance.
- 6.5 In the event of a defect we shall be entitled to exercise our statutory rights in full, with the place of warranty being the specified place of use; we shall be entitled, at our discretion, to require the supplier to remedy the defects or to deliver substitute goods. Should the supplier, within a reasonable period, fail to fulfil its obligation to effect subsequent performance in accordance with the discretion exercised by us, or should subsequent performance fail, we shall be entitled to immediately assert our rights to reduction of the purchase price, cancellation, damages instead of performance or reimbursement of expenses. Subsequent performance shall be deemed to have failed if an attempt to remedy defects or effect substitute delivery does not result in a delivery free of defects by the supplier. The supplier shall be obliged to bear all expenses required for a remedy of defects or a substitute delivery. In addition, we shall be entitled to withhold payment based on the proportional value until due performance.
- 6.6 Our right to performance shall continue to exist until legal assertion of claims for damages instead of performance. Should we withdraw from the contract due to the existence of a defect, the supplier shall also be obliged to reimburse us for the costs connected with the contract.
- 6.7 We shall be entitled to the rights of recourse against the supplier in line with §§ 478, 479 BGB (German Civil Code) even if the supplier has only delivered parts earmarked for the object newly produced by us.
- 6.8 Should the supplier be in default with regard to the substitute delivery or remedy of a defect, we shall be entitled to procure a replacement or remedy a defect ourselves or have third party do so at the expense of the supplier. The same shall apply if it is a matter of urgency and the supplier cannot be reached in time or is not in a position to remedy the defect or procure a replacement in time. The supplier has to be immediately notified of this situation.
- 6.9 Our claims based on defects shall become statute-barred in accordance with the legal provisions, at the earliest, however, 2 months after we have met any claims of our customer based on defects, which claims resulted from the same defect of the object. This suspension of expiration of prescription shall expire at the latest 5 years after the object was delivered to us. The limitation period shall start to run anew for parts which were changed or subsequently improved. Should the supplier investigate the existence of a defect or its remedy, the limitation period shall be interrupted until the supplier notifies us of the result of its investigation, declares the defect to be remedied or refuses to continue to remedy the defect. An investigation shall be deemed to take place in particular in the event that the supplier initiates the investigation or passes on the delivery for investigation to a third party.

## 7. Product Liability, Indemnity and Third Party Liability Insurance Cover

- 7.1 Insofar as the supplier is responsible for damage caused by a defective product, it shall be obliged to indemnify us against claims asserted by a third party at our first request if the cause lies within the scope of its control and/or organization, and if the supplier itself is liable vis-à-vis third parties.
- 7.2 Within the limits of its liability for damage claims as defined by item 7.1, the supplier shall also be obliged to reimburse any expenses in accordance with §§ 683, 670 BGB (German Civil Code) and in accordance with §§ 830, 840, 426 BGB, which expenses were incurred as a result of or in connection with a recall action carried out by us. To the extent possible and to be expected from us, we shall be obliged to inform the supplier about the content and scope of the recall measures to be taken by us, and to give the supplier the opportunity to make its comments. This shall be without prejudice to other statutory claims.
- 7.3 Köppern shall be entitled to require of the supplier that it takes out a product liability insurance with a lump sum insurance cover of EUR 5 Mill. per each event of personal injury/damage to property; this shall be without prejudice to any further claims for damages we may be entitled to.

## 8. Protection of Design and Industrial Property Rights.1

- 8.1 Insofar as the design of the parts ordered was developed by us, the supplier shall commit itself to neither now nor later deliver or offer such parts to third parties. We shall retain title to models, drawings, samples or suchlike made available by us to the supplier for executing an order, and they have to be returned to us - of which we have to be notified - after the order has been executed.
- 8.2 The supplier shall be liable vis-à-vis us that no third party's rights are infringed in connection with its delivery, and the supplier is aware of the fact that we sell the final products on a world-wide basis.
- 8.3 Should a third party assert claims against us because of this situation, the supplier shall be obliged to indemnify us against these claims at our first written request. Without the consent of the supplier, we shall not be entitled to enter into any agreements with such third party, in particular to effect a compromise.
- 8.4 The obligation of the supplier to indemnify us shall apply to all expenses incurred by us from necessity in connection with the assertion of claims against us by a third party.

**9. Reservation of Title and Provision of Materials**

9.1 We shall not recognize any extended or expanded reservation of title by the supplier with regard to the goods delivered to us.

9.2 We shall retain title to materials or parts provided by us. They may only be used in the context of our order. Processing of the materials and assembly of parts by the supplier shall take place on our behalf. Should our materials and parts be connected, mixed or processed with other items which are not our property, we shall acquire co-ownership of the new object in the proportion of the value of our materials and parts to the value of the other items processed at the time when the connection, mixing or processing takes place. Should the supplier's object be deemed to be the main object, it shall be considered agreed that the supplier transfers to us proportional co-ownership. The supplier shall keep in safe custody our sole property and our co-property for us free of charge.

**10. Secrecy**

10.1 Even after the business relationship has been terminated, the supplier shall be obliged to treat confidentially all information obtained in the context of the business relationship and not to disclose in whole or in part such information to third parties. Without our consent, the supplier shall likewise not use the information obtained for its own business. The obligation to observe secrecy shall not apply to information of which it can be proven that it is common knowledge, that the supplier already knew about it before it had been made available to it by us, or to information the supplier had learned from third parties without infringement of an obligation to observe secrecy incumbent on the third party.

10.2 Should the supplier learn about protectable inventions made by our company, all rights arising from these inventions, in particular the right to apply for proprietary rights, shall belong to us. The supplier shall at no point in time disclose its knowledge about the inventions and point out this knowledge to us as prejudicial to novelty, neither on submitting applications for proprietary rights nor otherwise.

**11. Set-Off Clause with Regard to Group Companies**

We shall be entitled to effect set-off against claims due and not due and even future claims against the supplier to which we or our affiliated companies as defined in §§ 14 ff. Company Law are entitled.

**12. General Provisions**

12.1 Without our prior consent, the supplier shall not be entitled to pass on the order to third parties. On request, we shall be told the name of subcontractors.

12.2 We shall treat the personal data of the supplier in compliance with the Federal Data Protection Act.

12.3 Unless expressly agreed otherwise, place of performance for the delivery obligation shall be the delivery address designated by us or the point of use. For all other obligations of both parties, place of performance shall be our principal place of business.

12.4 Venue shall be our principal place of business. We shall be entitled, however, to also bring an action against the supplier at its statutory venue.

12.5 The contract shall be subject to the law of the Federal Republic of Germany with the exclusion of the conflict of laws provisions, the uniform UN-Convention on Contracts for the International Sale of Goods or other conventions with regard to the law on the sale of goods.

12.6 Should individual provisions be ineffective or unenforceable or lose their effectiveness as a result of circumstances occurring at a later date, this shall not affect the effectiveness of the remaining provisions. An ineffective or unenforceable provision has to be considered as replaced by such effective provision which is as close as possible to the economic purpose pursued by the parties. The same shall apply to gaps in the contract.