

**General Terms and Conditions of Purchase of
Maschinenfabrik Köppern GmbH & Co. KG, Köppern Aufbereitungstechnik GmbH & Co KG, Köppern Entwicklungs-GmbH**

valid from 01.01.2021

1. Scope of application

- 1.1 These General Terms and Conditions of Purchase ("**GTC of Purchase**") shall apply to all current and future business relations between our domestic or foreign business partners and suppliers ("**Seller**") and us or with us within the meaning of §§ 14 et seq. German Corporation Act (AktG). Our GTC of Purchase shall only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) and to legal entities under German public law or public-law special fund.
- 1.2 The GTC of Purchase shall particularly apply to contracts for the sale and/or delivery of movable goods ("**Goods**"), irrespective of whether the Seller manufactures the Goods himself or purchases them from other suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTC of Purchase in the current version at the time of our order or, in any case, in the version most recently communicated to the Seller in text form, shall also apply as a framework agreement for similar future contracts, without us being obligated to refer to them in each individual case.
- 1.3 These GTC of Purchase shall be exclusively applicable. Deviating, conflicting or supplementary General Terms and Conditions of the Seller shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This consent requirement shall apply in any case, even if we accept the Seller's deliveries without reservation in the knowledge of the Seller's General Terms and Conditions.
- 1.4 Seller's legal representations and notifications concerning the contract (e.g. setting of a deadline, reminder, withdrawal), must be made in writing or text form (e.g. letter, e-mail, fax) (hereinafter "**in writing**"). Statutory form requirements and other evidence, in particular in the event of doubts regarding legitimacy of the person making representations, shall remain unaffected.
- 1.5 Individual agreements made with the Seller (including collateral agreements, supplements and amendments) shall prevail over these GTC of Purchase. The content of such individual agreements shall depend on written contract and/or our confirmation in writing.
- 1.6 References to the validity of statutory provisions shall be deemed a clarification only. Even in the absence of such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTC of Purchase.

2. Contract conclusion

- 2.1 Our order shall be deemed binding at the earliest upon written submission or confirmation. The Seller must inform us about any apparent errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents so that we may correct and/or complete them; otherwise the contract shall be deemed not to have been concluded.
- 2.2 The Seller is obliged to accept our order within a period of two weeks and to send us a corresponding order confirmation. If this is not the case, we are entitled to revoke our order, even if our order was preceded by a binding offer from the Seller. Delayed acceptance shall be deemed a new offer requiring our acceptance.
- 2.3 The order confirmation must state the price, the binding delivery date and all numbers and symbols of our order.
- 2.4 Seller's offers, drafts, samples and models are free of charge and do not constitute any obligations for us.

3. Delivery period and Delays

- 3.1 Delivery periods or dates stated by us in the order shall be binding. If the Seller realises that an agreed delivery time cannot be met for any reason whatsoever, he shall immediately inform us in writing, stating the reasons and the duration of the delay.
- 3.2 If the Seller does not provide his services or not within the contractual delivery period or should Seller be in default, our rights shall be governed by the statutory provisions – particularly those concerning withdrawal and damages.
- 3.3 Force majeure, labour disputes, epidemics, pandemics or other unavoidable and unforeseeable events shall only release the Seller from its obligations to perform for the duration of the disturbance and to the extent of its effect. The Seller is obliged to provide the necessary information immediately within the scope of what is reasonable and to adapt his obligations to the changed circumstances in good faith. We shall be wholly or partially released from the obligation to accept the ordered delivery/service and shall be entitled to withdraw from the contract to this extent if the delivery/service is no longer usable for us - taking into account economic aspects - due to the delay caused by such circumstances.
- 3.4 If the Seller fails to fulfil one or more of its contractual obligations due to the default of a third party, who was engaged to fulfil all or part of the Agreement, the Seller may invoke force majeure only to the extent that the requirements for assuming the existence of force majeure as defined in clause 3.3. of these GTC of Purchase apply not only to the Seller but also to the third party.

4. Performance, Delivery, Transfer of risk, Export Control, Default of Acceptance and Packaging

- 4.1 The Seller is not entitled to pass on the order to third parties without our prior consent. Subcontractors must be named to us on request.
- 4.2 Unless expressly agreed otherwise, delivery shall be "CPT" (carriage paid to destination Hattingen). The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance – "**Bringschuld**").
- 4.3 We may, within the scope of reasonability for the Seller, demand technical changes to the goods and/or the time of delivery. In doing so, any effects, in particular with regard to additional and reduced costs and delivery dates, shall be settled by mutual agreement.
- 4.4 We shall accept partial deliveries only by express agreement. If partial deliveries have been agreed, the remaining quantity must be listed.
- 4.5 The delivery must include a delivery note in duplicate stating our exact order data (order number, part number and order date) in addition to the exact description of the scope of the delivery in terms of article, type and quantity etc. If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. Besides the delivery note, a corresponding dispatch note with the same content shall be sent to us.
- 4.6 The risk of accidental loss and accidental deterioration of the goods shall pass to us upon delivery at the place of performance. If acceptance has been agreed, this shall be decisive for the passing of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly in the case of an acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- 4.7 The Seller shall ensure that the goods can be exported to the place of delivery ("**destination**") specified in the Purchase Order. He shall bear the risk of any export ban at the time the contract is concluded. The Seller shall bear the risk for subsequent export bans if and to the extent that such a ban was identifiable upon careful examination at the time of conclusion of the contract of sale. In the event of a dispute, the Seller must prove that he has carried out all suitable and necessary verification measures.
- 4.8 Default of acceptance shall be subject to statutory provisions. However, the Seller must expressly offer his services to us if a specific or determinable calendar period has been agreed for actions or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand compensation for his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an unacceptable item to be manufactured by the Seller (individual production), the Seller shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.
- 4.9 The place of performance for the Seller's obligation to take back the goods in accordance with § 4 German Packaging Ordinance (VerpackV) is the place of delivery of the goods.
- 4.10 Charged packaging, insofar as it is reusable, shall be credited at the full charged value upon return. The credit note shall always be submitted in a single copy, stating the invoice with which the debit was made.

5. Prices and Payment Conditions

- 5.1 The prices stated in our order are binding; this also applies to blanket orders for the entire duration of the agreement. If no prices are stated, the Seller's list prices at the time of the order shall apply with the customary deductions.
- 5.2 All prices shall be CPT (carriage paid to destination Hattingen unless agreed otherwise), in accordance with Incoterms 2020 to the delivery address specified by us, whereby we shall be entitled to determine the type of packaging, the means of transport, the transport route and the transport insurance. Unless otherwise agreed in individual cases, the price shall include the statutory VAT, unless this amount is indicated separately, as well as all services and ancillary services of the Seller (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- 5.3 Unless otherwise agreed, no remuneration or compensation shall be granted for visits or the preparation of offers, projects etc.

- 5.4 In the event of acceptance of premature deliveries, the due date shall be based on the agreed delivery date. If the invoiced goods arrive at a later date than the invoice, the date of receipt of the goods shall be the date of receipt of the invoice.
- 5.5 Unless otherwise agreed, the agreed price is due within 30 calendar days starting from complete delivery and performance (including possible acceptance) and receipt of a correct invoice. For payments within a 14-day period, the Seller shall grant a 3% discount on the net amount of the invoice.
- 5.6 Invoices shall be sent to us in duplicate upon dispatch of the goods, but separately from the goods. Our order number, part number and the order date must be stated in each invoice. Each invoice must comply with the respective legal requirements, in particular it must contain the full name and exact address of the supplying or performing company, the tax number or VAT number, a consecutive invoice number, the date of issue of the invoice, the quantity and type of items to be supplied or the type of service to be rendered. Invoices that are not properly issued shall be deemed not to have been issued.
- 5.7 In those cases in which delivery or service may be exempt from VAT, the Seller shall be obliged to provide the necessary evidence or to cooperate in providing such evidence. For deliveries within the European Union, the Seller must provide his VAT registration number, prove his entrepreneurial status and cooperate in the bookkeeping and documentary proof of export.
- 5.8 We shall have the right to set-off, withholding and defense of non-performance to the extent permitted by law. In the event of defective delivery, we are in particular entitled to withhold payment proportionately to the value of the goods until proper performance. On the other hand, when we effect payments this shall not constitute recognition of the delivery as complying with the contract.
- 5.9 The Seller shall only have a right of set-off or retention on the basis of counterclaims which have been determined by final judgement or are undisputed.
- 5.10 Without prior written consent - which may not be unreasonably withheld - the Seller is not entitled to assign his claims against us or have them collected by third parties.
- 5.11 We do not owe any interest on maturity. The statutory provisions shall apply to default in payment.

6. Retention of title, Industrial property rights, Confidentiality

- 6.1 The transfer of ownership of the goods to us must be made unconditionally and without regard to the payment of the price. However, if we accept in individual cases an offer of transfer of title from the Seller conditional upon payment of the purchase price, the Seller's reservation of title shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we shall remain entitled to resell the goods in advance of payment of the purchase price and to assign the resulting claim (alternatively, the simple reservation of title extended to resale). This excludes all other forms of retention of title, in particular the extended, the forwarded and the extended retention of title for further processing.
- 6.2 Items provided by us (e.g. substances, materials) shall remain our property and - as long as they are not processed - shall be stored separately at the Seller's expense and shall be insured to a reasonable extent against destruction and loss. They may only be used within the scope of our order.
- 6.3 The processing, mixing or combination ("**further processing**") of the items provided by us by the Seller shall be carried out on our behalf. If our materials and parts are further processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our materials and parts to the other processed items at the time of further processing. If the Seller's item is to be regarded as the main item, it shall be deemed agreed that the Seller shall transfer co-ownership to us on a pro rata basis. Our sole ownership and the co-ownership shall be held in safekeeping free of charge for us by the Seller. The same shall apply in the event of further processing of the delivered goods by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 6.4 Insofar as the design of the ordered parts originates from us, the Seller undertakes not to supply or offer them to third parties, either now or later. Models, drawings, samples and similar which we make available to the Seller for the execution of an order shall remain our property and shall be returned to the Seller upon completion of the order with notification.
- 6.5 The Seller shall be liable to us for ensuring that no third-party rights are infringed in connection with his delivery, whereby the Seller is aware that we distribute the end products worldwide. If claims are made against us by a third party for this reason, the Seller shall be obliged to indemnify us against such claims upon first written request. We shall not be entitled to make any agreements with the third party - without the consent of the Seller - in particular to conclude a settlement. The Seller's obligation to indemnify us relates to all expenses which we necessarily incur in connection with the claim by a third party.
- 6.6 We reserve our property rights and copyrights to illustrations, drawings, calculations and other offer documents; they may not be made accessible to third parties without our express written consent. They are to be used exclusively for production based on our order; after completion of the order they are to be returned to us unsolicited and free of charge. They must be kept secret from third parties. The obligation to maintain secrecy shall only expire until and insofar as the knowledge contained in the documents provided has become generally known.
- 6.7 The Seller is obliged - even after the termination of the business relationship - to treat all information received in connection with the business relationship confidential and not to disclose such information to third parties either in whole or in part. The Seller shall also not use the information received for its own business transactions without our permission. The obligation of secrecy does not apply to information which is demonstrably generally known, which the Seller already knew before it was made accessible to him by us, or which was brought to the Seller's attention by third parties without violating an obligation of secrecy which was incumbent on the third party.
- 6.8 If the Seller becomes aware of protectable inventions made by us, we shall be entitled to all rights deriving from the inventions, in particular the right to apply for industrial property rights. The Seller shall not disclose his knowledge of the inventions at any time and shall not hold us liable for any infringement of novelty either in the case of applications for industrial property rights or otherwise.

7. Liability for defects

- 7.1 The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.
- 7.2 All goods delivered by the Seller and all services rendered by the Seller must, at the time of the passing of risk, comply with the latest state of the art, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and professional organisations. Internationally recognized general standards such as DIN, ISO, IEC, EN, VDI, VDE must be observed. If deviations from these regulations are necessary in individual cases, the Seller must obtain our written consent. The regulations notified by us to the Seller shall also apply.
- 7.3 The Seller expressly guarantees compliance with the requirements pursuant to Section 7.1 as well as compliance with other agreements or promises of the Seller regarding the quality of the delivered goods.
- 7.4 If the Seller has reservations about the type of execution we desire, he must inform us immediately in writing.
- 7.5 Acceptance of delivery is always subject to quantity and quality control. We are obliged to inspect the goods for any defects within a reasonable period of time. A notice of defects shall be deemed to have been given in good time if it is received by the Seller within a period of 20 working days after delivery in the case of identifiable defects, or if the defect was not identifiable in a proper inspection, within a period of 20 working days after discovery. We expressly draw attention to the fact that some of the goods purchased by us must be delivered to the customer in their original packaging for installation there. On receipt of the goods by us, we are only obliged in these cases to detect and complain about damage to the packaging. A further obligation on our part to inspect the goods only exists at the time of installation of the goods at the end customer. We expressly reserve the right to recognise excess delivery as being in accordance with the contract. If, in the event of a defect in the goods, subsequent performance by the Seller fails, the obligation to inspect and give notice of defects pursuant to § 377 of the German Commercial Code (HGB) shall not apply to services rendered for the purpose of subsequent performance by the Seller.
- 7.6 Notwithstanding § 442 para. 1 p. 2 BGB, we shall be entitled to claims for defects without limitation even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- 7.7 Subsequent performance shall also include the removal of the defective goods and their reinstallation, provided that the goods have been installed in or attached to another item in accordance with their nature and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the removal of defects shall remain unaffected; however, in this respect we shall only be liable if we have recognised or grossly negligently failed to recognise that there was no defect.
- 7.8 Notwithstanding our statutory rights and the provisions in Section 7.7, the following shall apply: If the Seller fails to fulfil his obligation to provide subsequent performance - at our discretion either by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by us, we may remedy the defect ourselves and demand from the Seller reimbursement of the expenses required for this purpose or a corresponding advance payment. If the subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.
- 7.9 Otherwise, in the event of a defect of quality or title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

8. Suppliers' recourse

- 8.1 Our statutory rights of recourse within a supply chain (supplier recourse according to §§ 445a, 445b, 478 BGB) shall be valid without restriction in addition to the claims for defects. In particular, we are entitled to demand from the Seller exactly the type of subsequent performance (repair or replacement) that we owe to our customer in the individual case. Our statutory right of choice (§ 439 para. 1 BGB) shall remain unaffected.
- 8.2 Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with §§ 445a para. 1, 439 para. 2 and 3 BGB), we shall notify the Seller and request a written statement with a brief description of the facts. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the Seller shall be responsible for providing proof to the contrary.
- 8.3 Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation into another product.

9. Statute of limitations

- 9.1 The mutual claims of the Parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided below.
- 9.2 Notwithstanding § 438 para. 1 No. 3 BGB, the general limitation period for claims for defects is 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year period of limitation shall apply accordingly to claims arising from defects of title, whereby the statutory period of limitation for claims for surrender in rem by third parties (§ 438 para. 1 No. 1 BGB) shall remain unaffected; moreover, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right - in particular in the absence of a limitation period - against us.
- 9.3 The limitation periods according to the law on the sale of goods, including the above extension, shall apply - to the statutory extent - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods of the law of sale leads to a longer limitation period in an individual case.

10. Product liability, Indemnity and Liability Insurance cover

- 10.1 Insofar as the Seller is responsible for product damage, he shall be obliged to indemnify us against claims of third parties on first demand if the cause is within his sphere of control and/or organisation and he is liable himself in relation to third parties.
- 10.2 Within the scope liability for damage acc. to Section 7.1, the Seller shall also be obliged to reimburse any expenses pursuant to §§ 683, 670 BGB arising from or in connection with a third-party claim, including any recall action carried out by us. We shall inform the Seller of the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment. Other legal claims shall remain unaffected.
- 10.3 We shall be entitled to demand that the Seller takes out product liability insurance with a lump-sum coverage of EUR 5 million per each event of personal injury/property damage; this shall be without prejudice to any further claims for damages we may be entitled to.

11. Final provisions

- 11.1 These GTC of Purchase and the contractual relationship between us and the Seller shall be governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules of private international law.
- 11.2 Exclusive place of jurisdiction for all disputes shall be - to the extent permitted by law - our place of business in Hattingen, if the Seller is a merchant or a legal entity under German public law within the meaning of § 38 para. 1 German Code of Civil Procedure (ZPO). However, we shall also be entitled to sue the Seller at his legal place of jurisdiction. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.
- 11.3 Should individual provisions be ineffective or unenforceable or lose their effectiveness due to circumstances occurring at a later date, the effectiveness of the remaining provisions shall remain unaffected. Any invalid or unenforceable provision shall be replaced by a valid provision which comes closest to the Parties' economic intentions. The same shall apply in the event of contractual loopholes in the contract.