

## Terms and conditions of purchase of KOLBUS GmbH & Co. KG

### 1. Preamble

- 1.1 Our terms and conditions of purchase shall apply exclusively. Different terms and conditions of the Supplier that we do not explicitly accept, are not binding on us, even if we do not explicitly contradict. Our terms and conditions of purchase shall also apply even if we accept or pay for deliveries of products and for services by the Supplier in the knowledge that the Supplier's general terms and conditions contradict or deviate from our terms and conditions of purchase.
- 1.2 Our terms and conditions of purchase shall also apply to all future business transactions with the Supplier.

### 2. Orders / Contract

- 2.1 Our orders and agreements are only binding on us if they are given by us in writing quoting the order number or by oral or by telephone confirmed in writing. Orders, delivery call-offs and confirmations may also be made by remote data transmission, telefax or email.
- 2.2 If the Supplier does not accept the order within two weeks from date of order, we shall no longer be bound to the order. Delivery call-offs shall be binding unless the Supplier contradicts within five working days from receipt.
- 2.3 For oral or telephone confirmations, information, consultations, etc., can be derived no rights against us, regardless of whether they are given before or after contract conclusion, and except in the case of our gross negligence. Such oral statements are only binding if they are confirmed by us in writing or if we have demonstrably renounced the written form requirement.
- 2.4 Cost estimates of the Supplier shall be binding and shall not be paid for unless otherwise expressly agreed.

### 3. Delivery / Delay

- 3.1 Agreed delivery and service dates shall be binding. Decisive is the receipt of defect free delivery at our residence.
- 3.2 Partial deliveries and/or deliveries before the agreed date shall require our prior consent.
- 3.3 If the Supplier has undertaken to perform installation or assembly, the Supplier shall bear all necessary ancillary costs, for example, travelling expenses, provision of the tools and allowances, subject to any differing agreements.
- 3.4 If agreed deadlines are not met, the statutory provisions shall apply. The Supplier shall notify us of delivery delays immediately and in writing. The announcement has no impact on our claims against the Supplier.
- 3.5 In case of culpable delay in delivery time or improper fulfillment, we are entitled to claim for each commenced week of exceeding a compensation of 1%, total maximum 10% of the value of the agreed delivery. Payment of the compensation shall not affect the obligations relating to the contractual performance or compensate for upcoming damage.
- 3.6 The unconditional acceptance of the delayed delivery or service shall not constitute a waiver of the claims for damages due to us as a result of

the delay in delivery or service, including the claims of compensation. This shall apply until payment in full of the sum owed by us for the delivery or service in question.

- 3.7 After the expiry of a reasonable grace period set by us to perform the services not yet provided by the Supplier we can also and notwithstanding to our other rights assign the performance of the services to a third party at the expense of the Supplier. Where such documents are required which are owned by the Supplier, they are immediately handed over to us. As far as property rights hinder the delivery by the third party, the Supplier is required to obtain an appropriate exemption from such rights immediately. The claim for compensation, which is caused until withdrawal or until placing the order to the third party, is in each case to be met by the Supplier.
- 3.8 Subject to different evidence, the values we determine during the incoming goods inspection shall govern the quantities, weights and dimensions.

### 4. Shipment

- 4.1 In all correspondence, invoices and shipping documents our order number, and possibly part numbers shall be indicated.
- 4.2 Delivery notes and invoices shall be submitted in single copy.
- 4.3 Any higher costs and expenses which arise as a result of any deviation from the normal shipment procedure or as a result of a deviation from the method of shipment we have demanded (road, rail or similar) shall only be recognised by us if this has been agreed in writing. This shall apply in particular if goods have to be shipped by express as the deadline has been exceeded.
- 4.4 Deliveries are made including proper packing plant-free or free shipping address (Incoterms 2010 FOB/CPT Rahden /Westphalia or destination). The transport insurance shall be borne by us.
- 4.5 The consequences of inaccurate, incomplete or late receipt of shipping documents, in particular missing data about the receiving point, the responsible department, the order code and order numbers shall be borne by the Supplier.
- 4.6 The Supplier is obliged to observe the statutory packing ordinance. We shall only accept transport packing which can be regarded as recyclable materials pursuant to this ordinance. The packing is to be identified with the symbols of the generally recognised recycling systems introduced (e.g. DSD, RESY, RVT). If this obligation is not fulfilled, we shall be entitled to return the packing to the Supplier free of charge to us.

### 5. Technical documents / Duty of non-disclosure

- 5.1 Our orders and all related commercial and technical details shall be treated as business secrets by the Supplier.
- 5.2 Documents and items, e.g. drawings, parts lists, calculations, models, tools, jigs etc., which we make available or pay for to run an order, shall remain or become our property. They shall be kept secret and returned to us after completion of the order without any special request to do so.

The Supplier shall be liable for loss or damage up to their due return and for misuse.

- 5.3 The documents may only be used in the extend approved by us and without prior approval not be duplicated or disclosed to third parties. In the event that a transfer to sub-contractors is essential to run the order, the subcontractor is to impose the above confidentiality obligation.
- 5.4 The Supplier is entitled only with our written consent to note the business relations with us in his advertising.

#### **6. Terms of payment**

- 6.1 The agreed prices are fixed prices and apply, unless otherwise agreed in the contract, carriage paid to place of performance, duty paid, packing included. The Incoterms shall also apply.
- 6.2 The payment period begins with delivery, at the earliest with the receipt of a proper invoice, but not before the agreed delivery date. Unless individual deviating contracts, payment is due within 14 days less 3% discount, without deduction within 30 days.
- 6.3 If the Supplier is in arrears with its services or we are due claims against the Supplier under the warranty, our payment obligations shall be deemed to be deferred in a reasonable amount. And we are still entitled to discount.
- 6.4 Without reminder letter we do not fall into default of payment. If we are in default of payment, you have the right to invoice the payment with interest on the base rate.
- 6.5 Exercising of the reservation of proprietary rights is possible only in case of prior withdrawal from the contract.
- 6.6 Part payments agreed shall become due at the earliest when they are called off.

#### **7. Goods delivered**

- 7.1 The goods delivered shall be suitable for the intended purpose and must meet the latest state of art.
- 7.2 At the time of delivery or acceptance the goods delivered must meet the applicable statutory requirements, particularly with the accident prevention regulations, standards, regulations on environmental protection (e.g. for the labeling of hazardous substances and processes) and with the generally recognized safety and occupational health regulations.
- 7.3 The Supplier is obliged to transfer all documents, drawings and other documentation that are needed for the intended use, unsolicited and completely with the transfer or acceptance of the goods delivered. Upon request, the Supplier is obliged to promptly name the manufacturer or pre-supplier.
- 7.4 To software that is part of the goods delivered, including the documentation, we have the right to use to the extent permitted by law (§§69a ff. UrhG) and in addition the right to use of the agreed features and to the required extent in accordance with the contract for use of the product. We may also create a backup copy without explicit agreement.

#### **8. Warranty**

- 8.1 The goods delivered shall be accepted subject to the inspection for the absence of defects, in particular for correctness, completeness and suitability. We shall be entitled to inspect the contractual goods insofar and as soon as this is expedient in the normal course of business. We shall report any defects detected immediately on their discovery. To this extent the Supplier shall waive the objection of a delay in filing a complaint.  
If the Supplier is delivering castings, it is herewith agreed that any defects (e.g. blisters or shrink holes) can only be discovered during machining, under certain circumstances not until the final work operation.
- 8.2 The statutory provisions on material defects and defects of title shall apply unless otherwise regulated in the following.
- 8.3 We shall have the right to choose the method of subsequent performance of the contract. The Supplier shall have the right to refuse the method of subsequent performance we have selected under the requirements of Section 439 para. 2 of the German Civil Code [BGB].
- 8.4 If the Supplier does not commence rectification of the defect immediately after our request to do so, we shall, in urgent cases, have the right, especially in order to avert imminent risks or prevent greater damage, to perform rectification ourselves or have it performed by a third party at the Supplier's expense.
- 8.5 The warranty period is 24 months, starting with the commissioning or technical acceptance of the delivery by us. For deliveries where is no provision for commissioning or technical acceptance, the warranty period is 24 months beginning with the delivery (transfer of risk).
- 8.6 In the case of defects of title the Supplier shall indemnify us for any existing claims of third parties. A period of limitation of ten years shall apply to defects of title.
- 8.7 For parts of the consignment maintained or repaired by the Supplier within the period of limitation, this period of limitation shall start to run again at the time when the Supplier has satisfied our claims for subsequent performance in full.
- 8.8 Accruing costs as a result of the defective delivery of the contractual goods, in particular transport, travelling, labour and material costs or costs for an incoming goods inspection surpassing the usual scope, shall be beared by the Supplier.
- 8.9 If we take back products which we manufactured and/or sold as a result of a defect in the contractual goods delivered by the Supplier or if, as a result thereof, our purchase price was reduced or if a claim was asserted against us in any other way, we reserve the right of recourse against the Supplier and the setting of a deadline otherwise required shall not be needed for our defect rights.
- 8.10 We shall be entitled to demand from the Supplier the reimbursement of expenses which we had to bear in the relationship with our customers because the latter had a claim against us for compensation for the expenses required for the purpose of subsequent performance, in particular transport, travelling, labour and material costs.

- 8.11 Notwithstanding the provision in Article 8.6, the period of limitation in the cases under Articles 8.5 and 8.9 shall occur at the earliest two months after the time when we have satisfied the claims asserted by our customer against us but at the latest five years after delivery by the Supplier.
- 8.12 If a material defect is detected within six months from the passing of risk, it shall be assumed that the material defect already existed on the passing of risk unless this assumption is irreconcilable with the nature of the goods or the defect.

#### **9. Product liability and Recall**

- 9.1 In the event that a claim is made against us owing to product liability, the Supplier shall be obliged to indemnify us for such claims provided that and insofar as the damage was caused by a defect in the contractual goods delivered by the Supplier. However, in cases of liability dependent on fault, this shall only apply if the Supplier is to blame. If the Supplier is responsible for the cause of the damage, the Supplier shall bear the burden of proof to this extent.
- 9.2 If the Supplier is liable, it shall reimburse all the costs and expenses we incurred including the costs of any prosecution and recall campaign. Moreover, the statutory provisions shall apply.
- 9.3 The Supplier shall insure against all risks arising from product liability in a reasonable amount and shall present to us on request the insurance policy for inspection.

#### **10. Force majeure**

- 10.1 Acts of God, labour disputes, disruptions in operations not due to negligence, civil unrest, official action and other unavoidable events shall entitle us - notwithstanding our other rights - to rescind the contract, in whole or in part, provided such incidents are of not inconsiderable duration and result in a substantial reduction in our needs.

#### **11. Performance of work**

- 11.1 Persons who perform work on the works premises to perform the contract shall observe the provisions of the plant rules in question. Our liability for accidents which happen to such persons on the works premises shall be excluded. This shall not apply insofar as the accidents are caused by wilful or grossly negligent obligation infringements of our statutory representatives or agents.

#### **12. Items provided free issue**

- 12.1 Materials, parts containers and special packaging provided by us are our property. They may only be used for their intended purpose. The processing of substances and the assembly of parts shall take place for us. It is herewith agreed that we shall be co-owners of the products manufactured using our substances and parts, which shall be kept safe for us by the Supplier, in the ratio of the value of the materials provided free issue to the value of the total product.

#### **13. Assignment**

- 13.1 Any assignment of claims against us shall only be permissible if we have granted our written consent thereto. This shall also apply to undisclosed assignments.
- 13.2 The Supplier shall not be entitled to set off claims asserted against us with payment claims unless the Supplier's payment claims have been ruled to be indisputable or res judicata.
- 13.3 Rights of retention of the Supplier are excluded if they are not based on the same contractual relationship.
- 13.4 The contractual obligations of the Supplier may only be fulfilled by third parties commissioned by the Supplier with our prior written consent.

#### **14. Venue and Applicable law**

- 14.1 The place of performance for the deliveries and services of the Supplier shall be the headquarters of KOLBUS, unless otherwise expressly agreed.
- 14.2 The venue shall be Rahden/Westphalia. We shall be entitled to sue the Supplier, at our discretion, at the court having jurisdiction over its headquarters or its branch as well as at the court of the place of performance
- 14.3 German law alone shall apply to contractual relationships to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 14.4 Should one provision of these terms and conditions and the other agreements reached be or become ineffective, the validity of the other provisions shall remain unaffected thereby. The contracting parties shall be obliged to replace the ineffective provision with an arrangement which comes closest to it as regards the commercial success.

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