

# General Terms and Conditions of Purchase 11/2017

## § 1 Scope

- (1) These General Terms and Conditions of Purchase apply to the procurement of goods and services of all kinds by KOCH Pac-Systeme GmbH (hereinafter referred to as "KOCH").
- (2) These General Terms and Conditions of Purchase apply exclusively. KOCH will not acknowledge any terms and conditions at variance from, or contradictory to, these General Terms and Conditions of Purchase, unless KOCH has given its explicit written consent thereto.
- (3) These General Terms and Conditions of Purchase shall also apply to all future transactions between the contract parties, including where KOCH has unreservedly accepted the goods or service in question in awareness of varying or contradictory terms and conditions.

## § 2 Contracting

- (1) If the Vendor does not accept the purchase order in writing within 10 working days of receipt, KOCH shall be entitled to cancel it. A purchase order under the terms of these General Terms and Conditions of Purchase is any written request from KOCH to the Vendor to supply goods or services.
- (2) Only purchase orders and delivery call-offs, and any amendments or additions thereto, submitted in writing or in text form shall be legally binding. Purchase orders issued verbally or by telephone shall require subsequent written confirmation in order to be legally valid. The same shall apply with regard to verbally concluded side agreements and amendments to the contract.
- (3) No remuneration shall be paid for visits, preparation of quotes, project work or similar services, unless such remuneration has been explicitly agreed or is payable on the basis of an absolute legal entitlement.
- (4) KOCH may request modifications to the design and execution of the supplied items at any time even after signing of the contract. The Vendor shall carry out such modifications without delay, provided that it is reasonable for it to do so. If the modifications result in additional or reduced cost, or necessitates any other adjustment of the contract terms, the parties shall agree on the said term by mutual consent.

## § 3 Delivery in accordance with sample; non-conformity to sample; engagement of third parties; change of sourcing

- (1) Where submission of a sample has been agreed, unless otherwise provided, adherence to the contract scheduling shall be subject to approval of the sample (Sale on approval, § 454 of the German Civil Code [BGB]).
- (2) Any non-conformity to an approved sample shall require the prior consent of KOCH in text form, and shall be requested by the Vendor in text form, accompanying Submission of the new sample. The same shall apply to any non-conformity to approval reports.
- (3) The engagement of third parties as subcontractors shall only be allowable with the prior written consent of KOCH. Any third party engaged by the Vendor shall generally be considered as the Vendor's agent in performance, including when KOCH has consented to such an engagement.

## § 4 Price; payment

- (1) The agreed prices shall be fixed, and shall represent the total price for production and supply of the goods or services in question, including all ancillary services.
- (2) Unless otherwise agreed, the purchase price shall be payable within 14 days of proper invoicing with a 3% prompt payment discount, or within 30 days of proper invoicing net.
- (3) Any agreed payments in advance shall only become payable when KOCH has been provided with a directly enforceable guarantee from a bank or credit insurance company authorised to operate in the European Union in the amount of the gross advance payment, said guarantee to be furnished free of charge to KOCH and for an unlimited period of time, and to be refunded after the final payment becomes due or on reimbursement of any overpayment where appropriate.

## § 5 Offsetting; retention of payment

- (1) KOCH shall be granted rights of offsetting and retention of payment to the full extent allowed by law.
- (2) The Vendor's right to offset payments shall be excluded, unless the counter-claims are undisputed or have been established in law. The same shall apply to any assertion of rights to retain payment.

## § 6 Scope of supply; delivery; contractual penalties; shipping method; force majeure

- (1) The scope of supply shall encompass all supplies and services necessary for correct and proper performance of the contract. Notwithstanding that requirement, the Vendor shall therefore be obliged to execute all supplies and services necessary to ensure the usability of the supplied items by KOCH in accordance with their intended purpose, apart from any such explicitly specified as supplies and services to be contributed by the customer.
- (2) All deliveries shall be made DDP (INCOTERMS 2010) to the specified delivery address, unless explicitly agreed otherwise. Unless otherwise agreed, the delivery address shall be KOCH Pfalzgrafenweil. The Vendor shall in any case take out adequate transport insurance, and shall furnish KOCH with proof of said cover on request. If charging of transport costs has been agreed, KOCH may specify the carrier and the method of shipping. Where KOCH pays the packaging costs, they shall be charged at cost; reusable packaging shall be credited in full if returned to the Vendor freight paid.
- (3) All delivery dates stipulated in the purchase order or elsewhere shall be binding.
- (4) Where deliveries are made as part of a wider delivery commitment (framework contract), each individual call-off shall be binding upon the Vendor in terms of quantity and delivery date. Any product into stock or pre-ordering prior to a call-off shall be undertaken at the Vendor's risk, unless otherwise agreed in the framework contract. Quantities and delivery lead times shall be stipulated on signing of the framework contract.
- (5) The Vendor may only claim mitigation on the grounds of failure by KOCH to supply essential materials, documents or information if it has requested KOCH in writing to furnish the said materials, documents or information, but has not received them within an appropriate period of time.
- (6) Delivery notes, waybills, invoices and all correspondence shall quote the KOCH purchase order number and item number. The Vendor shall, without need of special prompting, include an origin declaration, quoting the customs tariff number, with all deliveries.
- (7) The Vendor shall notify KOCH immediately in writing of any impending or actual non-adherence to an agreed delivery date or other deadline, the causes of the delay, and its likely duration. Classification as delayed delivery shall not be affected by any such notification.
- (8) In the event of delayed delivery, KOCH shall have full legal recourse. Furthermore, in the event of non-adherence to the agreed date of delivery of a contracted item to the agreed place a contractual penalty of 0.5% of the net contract value per week or part thereof – up to a maximum of 5% of the net contract value – shall become payable without further notice. Further claims by KOCH shall not be affected by imposition of a contractual penalty. The contractual penalty shall, however, be offset against any claims for damages. Unreserved acceptance of delayed deliveries and services shall not result in cancellation of the contractual penalty.
- (9) Partial deliveries shall only be allowable with KOCH's explicit consent, and shall be identified as such in the shipping documents. KOCH reserves the right to refuse early deliveries.
- (10) Force majeure shall exempt the parties from their contractual obligations to the extent of its effects for the duration of the interruption, plus an appropriate period of time for restarting where necessary. The contract parties shall undertake all reasonable measures to furnish the necessary information on the occurrence, nature and likely duration of any interruption without delay, and shall adjust their commitments according to the changed circumstances in good faith. During any such interruption, and for 2 weeks afterward, KOCH shall – without prejudice to its other rights – be entitled to withdraw from the contract in whole or in part, provided the interruption is not of insignificant duration, and its demand is significantly reduced owing to the resultant need to source from elsewhere.

## § 7 Risk; transfer of title

- (1) The Vendor shall bear the risk of accidental loss or deterioration of the goods until the goods are accepted by KOCH or by its authorised representative at their stipulated delivery location according to the contract.
- (2) Title to the goods shall be transferred to KOCH when payment is made at the latest.

## § 8 Quality assurance; incoming inspection

- (1) The Vendor shall implement appropriate, state-of-the-art quality assurance procedures in accordance with the type and scope of the goods and services being supplied, and shall furnish KOCH with proof of said procedures on request. The Vendor shall enter into a corresponding quality assurance agreement or comparable agreement with KOCH, if KOCH considers this necessary.
- (2) KOCH shall be entitled to conduct audits, or arrange for third parties to conduct audits, at the Vendor's location. Said audits shall be conducted following prior notification, and within normal business hours.
- (3) The Vendor shall keep all documents relating to the goods – in particular quality data records, test certificates, analyses, process data and all data necessary for process tracking – for the time during which it supplies KOCH's production, and in the case of components subject to mandatory documentation for a minimum of 15 years as from the final delivery of a contracted item to KOCH, and shall allow KOCH to inspect any such documentation on request.
- (4) KOCH's duty of incoming inspection of goods shall be limited to checking the quantity and identity of the delivered items, and checking for externally visible damage. KOCH shall notify the Vendor of any defects detected in the course of the said inspection. The notification shall be considered prompt if received by the Vendor within two weeks of delivery of the goods, or in the case of hidden defects within two weeks as from the time they are identified, or advised by KOCH's customer, as appropriate.

## § 9 Liability for material defects; warranty

- (1) The Vendor warrants that the goods it supplies shall conform to the agreed specification, shall be of the quality standard customary on the market, and shall be free of defects in all other ways. Where the Vendor is responsible for the design, it additionally warrants that the design is without error, and that the supplied goods are suitable for the specific purpose for which they were procured.
- (2) KOCH shall have unlimited warranty rights under law. If KOCH demands rectification, it shall be entitled, at its discretion, to demand repair of the defect or supply of a non-defective item, and compensation for damages, where appropriate.

(3) Compliance with test specifications and with approvals stipulated by KOCH and/or its customers shall not exempt the Vendor from its obligation to supply non-defective goods.

(4) If the Vendor does not begin rectifying defects immediately when requested to do so by KOCH, in urgent cases – in particular in order to avert acute risk or to avoid major damage – KOCH shall be entitled to carry out such rectification itself, or arrange for it to be carried out by a third party, at the Vendor's expense.

(5) Liability for defects shall begin on complete delivery of the contracted supply or service (transfer of risk). Where acceptance testing of the contracted supply or service has been agreed, liability shall begin on acceptance.

(6) Claims in relation to defects shall expire 36 months after transfer of risk.

## § 10 Liability for defects of title

(1) The Vendor warrants that the goods will be supplied unencumbered by third-party rights, and that no third-party rights will be infringed by the supply. The Vendor shall indemnify KOCH against any third-party claims.

(2) Claims arising from defects of title shall expire as per § 9 (6).

## § 11 Liability; product liability; recall

- (1) The Vendor shall bear legal liability, unless otherwise stipulated in these General Terms and Conditions of Purchase.
- (2) The Vendor shall indemnify KOCH in respect of any product liability claims made against KOCH, provided, and to the extent that, the damage was caused by a defect in the goods supplied by the Vendor. However, this shall only apply in cases of fault-based liability if the Vendor is at fault. If the cause of the damage lies within the Vendor's area of responsibility, the Vendor must furnish proof that it is not at fault.
- (3) If any claims are made against KOCH in respect of infringement of official safety regulations or of German or foreign product liability rules or laws based on a product defect caused by the goods supplied by the Vendor, KOCH shall be entitled to demand compensation for such damages from the Vendor, to the extent that the said damages were caused by the goods supplied by the Vendor.
- (4) The Vendor shall be liable for measures to avert risk or damage (such as recalls, customer service campaigns or other field actions) conducted by KOCH, by KOCH customers, or by other third parties, to the extent that the said measures were necessitated by a defect in the goods supplied by the Vendor, or resulted from some other infringement of obligations on the part of the Vendor.
- (5) The Vendor shall participate in good faith in voluntary customer service campaigns or other field actions conducted by KOCH, by KOCH customers, or by other third parties.

## § 12 Free-issue items/tools

- (1) Where KOCH provides the Vendor with materials or parts, the said items shall remain the property of KOCH. Any processing, combining or joining by the Vendor shall be carried out on behalf of KOCH as the manufacturer under the terms of § 950 of the German Civil Code (BGB). Where processing, combining or joining with third-party items results in the said third parties retaining right of title, KOCH shall acquire co-ownership of the new item in proportion of the value of the item it contributed relative to the other items at the time of their processing, combining or joining.
- (2) Production and test equipment provided free or paid for by KOCH (directly or by way of amortization), including accessories and related documents, shall become – or where appropriate remain – the property of KOCH, and shall be identified as such, or as its existing property where appropriate. The said production and test equipment shall be loaned to the Vendor, and may be recalled at any time.
- (3) The items cited in § 12 (1) and § 12 (2) may be used only for the production of goods for KOCH, and shall be maintained in good condition at the Vendor's expense.
- (4) Furthermore, the items cited in § 12 (1) and § 12 (2) shall, if necessary, be replaced at the Vendor's expense if the agreed output quantity – or the output quantity expected in good faith – is not reached.
- (5) The Vendor shall bear the risk in respect of the items cited in § 12 (1) and § 12 (2) as long as they remain in its keeping. It shall procure appropriate insurance cover for the said items, at their new value. The Vendor hereby assigns all claims arising from the said insurance cover to KOCH. KOCH accepts the assignment. The Vendor's right to retain the said items shall be excluded.

## § 13 Spare parts

The Vendor shall assure coverage of KOCH's spare part needs for a period of fifteen (15) years after delivery.

## § 14 Insurance

The Vendor shall take out appropriate insurance cover in respect of its commitments, and shall furnish KOCH with proof of said cover at any time on request.

## § 15 Laws, standards and regulations

(1) The Vendor guarantees that the supplied items (including their packaging) will comply with the legal requirements and relevant official and trade standards and regulations (DN standards, EU directives, regulations of public agencies, employers' liability insurance associations, etc.) applying at their place of use at the time of delivery. It guarantees, in particular, that the supplied items will cause no harm to the environment or entail any other hazard, material disadvantage or significant impact on the environment and/or the workforce of KOCH. It shall further ensure, where necessary, that substances or preparations subject to hazardous materials laws are properly marked as such, and that the EC safety data sheet submitted to KOCH as necessary is complete and correct. The Vendor further guarantees that the supplied items will comply with the requirements for CE marking. The Vendor shall furnish KOCH with a relevant declaration of conformity without prompting.

(2) If non-conformity to these requirements is essential in individual cases, the Vendor must obtain written consent for it. The Vendor's warranty obligations shall not be limited by such consent.

(3) If the Vendor has any concerns about the method of execution requested by KOCH, it shall notify KOCH of them immediately in writing.

## § 16 Compliance

The Vendor undertakes to comply with the applicable laws governing relations with employees, environmental protection, and occupational safety. The Vendor shall furthermore comply with the principles of the UN's Global Compact Initiative. Those principles relate in particular to the protection of international human rights, the right to collective bargaining, the abolition of forced and child labour, the elimination of discrimination in recruitment and employment, responsibility for the environment, and prevention of corruption. More information on the UN's Global Compact Initiative can be found at [www.unglobalcompact.org](http://www.unglobalcompact.org).

## § 17 Confidentiality; reservation of rights

(1) The Vendor undertakes to maintain confidentiality with regard to all commercial or technical information not in the public domain to which it gains access through its business relationship with KOCH. It further undertakes not to disclose any such information to third parties without KOCH's consent, and to use the said information only for the purpose for which it was disclosed in the first place. The Vendor shall impose a corresponding undertaking on its subcontractors.

(2) KOCH reserves the rights of title and copyright to all the samples, drawings, sketches and other information – whether in physical or non-physical form – provided to it. They shall be used only for supplies and services to KOCH.

## § 18 Rights of withdrawal and termination

- (1) KOCH shall be entitled to withdraw from or terminate the contract with immediate effect if:
  - (a) the Vendor's financial position materially deteriorates, or a material deterioration is impending, and the fulfilment of a supply commitment to KOCH is thereby placed at risk;
  - (b) the Vendor is declared insolvent or is over-indebted;
  - (c) the Vendor ceases making payments; or
  - (d) the Vendor requests the opening of insolvency proceedings or similar action in order to clear its debts.

(2) Where KOCH withdraws from or terminates the contract based on the above rights, the Vendor shall compensate KOCH for the resultant loss, unless the assertion of the rights of withdrawal and termination is based on circumstances beyond the Vendor's control.

(3) No legal rights or claims shall be limited by the provisions of this Section 18.

## § 19 Other provisions

(1) If individual parts of these General Terms and Conditions of Purchase should prove to be legally ineffective, the effectiveness of the remaining provisions shall not be impaired as a result. The same shall apply if these General Terms and Conditions of Purchase are shown to have omitted a relevant provision. In such a case, the effective provisions which the parties would have agreed pursuant to the commercial purpose of these General Terms and Conditions of Purchase if they had been aware of the omission shall be considered to have been agreed.

(2) Unless explicitly otherwise agreed, the place of performance in respect of the delivery commitments arising shall be the shipping address/place of use stipulated by KOCH.

(3) The official language of the contract is German. If the parties use multilingual documents, the German wording shall take priority.

(4) The relationship between the Vendor and KOCH shall be exclusively subject to the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980.

(5) In the event of any disputes arising from the contract relationship, where the Vendor is a registered trader (merchant), a legal entity of public law or a special fund under public law, suits must be filed with the court having jurisdiction at the relevant KOCH place of business. KOCH shall also be entitled to file suit against the Vendor in any other allowable jurisdiction.

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