



**Köster & Co. GmbH**

## **General Terms and Conditions**

### **1. Scope of application**

These General Terms and Conditions shall apply to companies, legal entities under public law and special funds under public law. These General Terms and Conditions shall also apply if Köster & Co. GmbH (hereinafter KÖCO) does not refer to them separately. Deliveries and services by KÖCO shall be made exclusively on the basis of the following General Terms and Conditions.

Any terms and conditions asserted by the customer shall only be binding if KÖCO expressly acknowledges them in writing for the respective concrete conclusion of the contract. Any unconditional delivery or performance by KÖCO without an express objection in relation to the customer's terms and conditions of purchase (or other terms and conditions) shall not lead to the inclusion of these terms and conditions in the contractual relationship. These General Terms and Conditions shall be deemed to have been accepted by the customer in their entirety at the latest upon receipt of the KÖCO delivery.

### **2. General provisions**

Offers from KÖCO are subject to change. Orders shall only become binding with an order confirmation from KÖCO.

The information and illustrations contained in offers, price lists, brochures, catalogues, etc. are approximate values customary in the industry, unless KÖCO expressly designates them as binding. Information provided by telephone or in person shall always be non-binding, unless subsequently confirmed in writing by KÖCO.

### **3. Prices and terms of payment**

In the absence of a separate written agreement, the prices for deliveries shall apply EXW (Incoterms 2020). Invoices shall be due immediately and payable without deduction. Should it remain undisputed that partially defective goods were delivered, the customer shall nevertheless be obliged to make payment for the defect-free portion.

In the event of late payment, KÖCO may withhold the fulfilment of further contractual obligations until full payment has been received after notifying the customer in writing. Should it become apparent subsequent to the conclusion of contract that the payment claim could be at risk due to the customer's inability to pay, KÖCO may make its performance dependent on the provision of security. Should the customer not comply with the demand for the provision of security despite the setting of a deadline, KÖCO may withdraw from the contract and demand compensation for damages.

### **4. Delivery**

Unless otherwise agreed, delivery shall be "ex works" (EXW). The notification of readiness for dispatch shall be decisive for compliance with the delivery date. Partial deliveries shall be permissible to a reasonable extent. These shall be invoiced separately. Within a tolerance of 10 per cent of the total order quantity, production-related excess or short deliveries shall be permissible. This changes the total price according to its scope.



## **5. Shipping and transfer of risk**

Goods reported ready for dispatch shall be taken over by the customer without delay. Otherwise, KÖCO shall be entitled to choose to ship them or store them at the customer's expense and risk. In the absence of any special agreement, KÖCO shall choose the means of transport and the transport route. Upon notification of readiness for shipment, the risk shall pass to the customer, even if KÖCO handles the delivery and has commissioned the carrier accordingly. Transport or storage insurance shall not be owed without a separate agreement. Unloading shall always be the responsibility of the customer and shall be at the customer's risk and expense.

## **6. Delivery time**

The delivery time results from the agreements between the parties. Compliance with this presupposes that all commercial and technical issues have been clarified between the parties. Should this not be the case, the delivery time shall be extended accordingly. Should the customer – taking into account the statutory exceptions – set KÖCO a reasonable grace period for delivery in writing after the due date, and if the deadline is not met even after another reasonable grace period has been set in writing, the customer shall be entitled to withdraw from the contract within the framework of the statutory provisions. Upon KÖCO's request, the customer shall declare within a reasonable period of time whether it will exercise its right of withdrawal. Further claims arising from delay in delivery shall be determined exclusively in accordance with Clause 12 of these General Terms and Conditions.

## **7. Drawings and descriptions**

Should a party provide drawings or technical documents for or relating to the goods to be delivered or their manufacture, these shall remain the property of the submitting party.

## **8. Retention of title**

KÖCO shall retain ownership of all delivered goods until final fulfilment of all payments – including any ancillary services – arising from the delivery contract. The customer may neither sell, pledge nor assign the goods by way of security. In the event of seizure or confiscation or other dispositions by third parties, the customer shall inform KÖCO thereof without delay. In the event of breaches of duty by the customer, in particular, in the event of default in payment, KÖCO shall be entitled to withdraw from the contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the customer; any statutory provisions pertaining to the dispensability of setting a deadline shall remain unaffected. The customer shall be obliged to surrender the goods. This shall also apply if an application is made to open insolvency proceedings against the customer's assets.

Any processing or treatment of the reserved goods shall always be carried out by the customer on behalf of KÖCO. Should those goods subject to retention of title be processed or inseparably mixed with other items not belonging to KÖCO, KÖCO shall acquire co-ownership of said new item in the ratio of the invoice value of the goods subject to retention of title to the other processed or mixed items, at the time of processing or mixing, respectively. Should KÖCO's goods be combined or inseparably mixed with other movable objects to form a uniform object, and if the other object is to be regarded as the primary object, the customer shall transfer to KÖCO the proportionate co-ownership insofar as the main object belongs to him. The customer shall keep the property or co-property for KÖCO free of charge. In all other respects, the same shall apply to the item created by way of processing, combining or mixing, as to the goods subject to retention of title.



All claims and rights arising from the sale of goods to which KÖCO holds property rights are hereby assigned by the customer to KÖCO as security. KÖCO hereby accepts said assignment.

Should the value of existing securities exceed the secured claims by more than 10 per cent in total, KÖCO undertakes to release securities at its discretion upon the customer's request.

#### **9. Nature and quality of the goods**

The nature and quality of the goods are based on information in KÖCO catalogues, the offer or on the technical specifications agreed in writing with the customer. The risk of use lies with the customer.

#### **10. Notice of defects/material defects**

The customer shall be obligated to inspect the goods immediately after delivery, in order to ensure that they are in order and free of defects, and must lodge a complaint in writing regarding any substandard, incorrect or excess/short delivery immediately – or regarding defects that are not obvious immediately after becoming aware of them – with a precise description of the defect or incorrect delivery. Treatment and processing of the goods, as well as any resale, are to be refrained from. If no written complaint is issued vis-a-vis KÖCO within the aforementioned period, but no later than two weeks after receipt of the goods, the goods shall be deemed to have been approved.

There shall be no warranty for material defects caused by unsuitable or improper transport, improper storage, use, faulty assembly or commissioning by the customer or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper use or modifications or repair work performed by the customer or third parties without the prior consent of KÖCO. The same shall apply to defects which only reduce the value or the suitability of the goods in question to an insignificant extent.

Claims for material defects shall become statute-barred 12 months after delivery. In the event of any rectification efforts, the limitation period shall re-start, but shall end no later than 18 months after the original start of the warranty. This shall not apply insofar as longer periods are prescribed by law, in particular, for defects in a structure and for goods which are used for a structure in accordance with their customary use and cause said structure to become defective.

KÖCO shall be given the opportunity to determine the defect subject to complaint. Goods that are the subject of complaint must be returned to KÖCO immediately upon request. Should the customer fail to comply with these obligations or make changes to the goods already subject to complaint without KÖCO's prior consent, the claims for material defects shall expire.

#### **11. Right of rectification**

In the event of a justified notification of defects in due time, KÖCO shall – at KÖCO's discretion – either repair said defective goods or deliver a replacement in conformity with the contract. There shall be a right to request a rectification twice.

Should KÖCO not fulfil its obligation to rectify defects (or fail to do so) in accordance with the contract within a reasonable period of time, the customer may set KÖCO a final deadline in writing within which the rectification must be carried out. Following the fruitless expiry of this period, the customer may demand a reduction in the price, withdraw from the contract or carry out the necessary rectification itself, or have it carried out by a third party at KÖCO's expense and risk.



The reimbursement of costs shall be excluded insofar as the expenses increase because the goods have been taken to another location after delivery, unless this corresponds to the intended use of the goods.

## **12. Limitation of liability**

KÖCO shall only be liable for damages that have not occurred to the subject matter of the contract itself in the event of

- a. intent
- b. gross negligence on the part of their owners/executive bodies or senior employees,
- c. culpable injury to life, limb or health,
- d. defects, which KÖCO has fraudulently concealed,
- e. a guarantee commitment by KÖCO,
- f. liability that exists under product liability law for personal injury or property damage to privately used objects.

In the event of a culpable breach of material contractual obligations, KÖCO shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence – in the latter case – however, limited to reasonably foreseeable damage typical for the contract, unless life, limb or health are the subject of injury. Material contractual obligations refer to all obligations, the fulfilment of which is a prerequisite for the proper performance of the services, and compliance with which the customer regularly relies on (and may rely on). Further claims for damages shall remain excluded.

Insofar as liability is excluded or limited, this shall also apply to the personal liability of KÖCO's employees, workers, staff, legal representatives and vicarious agents.

## **13. Limitation**

All customer's claims – for whatever legal reasons – shall become statute-barred 12 months after delivery. The statutory time limits shall apply to claims for damages due to intentional or grossly negligent conduct.

## **14. Force majeure**

Each contracting party shall be released from its obligation to perform if (and to the extent that) it is unable to fulfil a contractual obligation for reasons of force majeure. Force majeure shall denote any event unrelated to the operation of the party and acting with unavoidable force as an external source – such as wars, civil wars, embargoes (under trade law), import or export bans, political unrest, pandemics, natural disasters and events, including insofar as they affect the intended transport routes, as well as unforeseeable and unavoidable official orders, strikes and lockouts. Force majeure shall also include interruptions affecting the supply of raw materials and energy. The party claiming force majeure shall immediately notify the other party in writing. If the force majeure event lasts longer than 90 consecutive calendar days, each party shall be entitled to terminate the contract with respect to the part of the contract not yet performed.



#### **15. Confidentiality**

The customer shall use all documents (including samples, models and data) and knowledge which he obtains from the business relationship only for the respective order with KÖCO, and shall keep this confidential vis-a-vis third parties with the same care as his own corresponding documents and knowledge. The provisions of the Law on the Protection of Trade Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen) apply. This obligation to maintain confidentiality shall commence from the initial receipt of the documents or knowledge, and shall continue after the end of the business relationship. Said obligation shall not apply to documents and knowledge which are generally known, which were already known to the customer without him being obliged to maintain secrecy, or which are subsequently passed on to him by a third party authorised to disclose them.

#### **16. Jurisdiction and applicable law**

The exclusive place of jurisdiction shall be the court responsible for KÖCO, whereby KÖCO may also bring legal action against the customer at his general place of jurisdiction.

The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Sales Convention") is hereby excluded.

#### **17. Miscellaneous**

The customer may only assign claims against KÖCO with KÖCO's consent. The customer shall only be entitled to rights of set-off and retention in the event of undisputed or legally established claims. Should individual provisions of these General Terms and Conditions be invalid or unenforceable, or become invalid or unenforceable subsequent to the conclusion of contract, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision, the effects of which come closest to the economic objective pursued by the parties with said invalid or unenforceable provision.

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