



Köster & Co. GmbH

General Terms and Conditions of Purchase

Scope of Application

(1) These Terms and Conditions of Purchase shall underpin all contractual agreements of the companies of Köster & Co. GmbH (hereinafter referred to as KÖCO)¹ within the scope of the purchase of goods and services (see also Special Conditions for Contracts for Work and Services). These shall only apply to companies in accordance with Section 310 German Civil Code (BGB).

(2) The inclusion of the general terms and conditions of business of the contractual partner – hereinafter referred to as the contractor – in particular, terms and conditions of sale and delivery, in the contractual relationship is hereby expressly objected to. These shall not become part of the contract. The unconditional acceptance of goods or services by KÖCO without express objection to the terms and conditions of sale and delivery in order confirmations or other correspondence shall not lead to the inclusion of said terms and conditions in the contractual relationship.

(3) KÖCO's Terms and Conditions of Purchase shall apply to the entire business relationship with the contractor and shall be independent of the time at which individual contracts are established. They shall also apply to future contracts. KÖCO shall be entitled to amend these Terms and Conditions of Purchase with effect for the future entire business relationship with the contractor following notification to this effect. Said notification shall be made in writing. If the contractor does not object to the modifications communicated in the notification within 4 weeks after receipt of the notification by the contractor, the modified Terms and Conditions of Purchase shall be deemed accepted by the contractor. KÖCO shall inform the contractor of this legal consequence in the notification.

Compliance with legal requirements/Notification of concerns

(1) The contractor is obliged to comply with the latest technological standards at the time of delivery, and to comply with the applicable laws and regulations, as well as with the requirements stipulated by the authorities. The contractor undertakes, in particular, to comply with the provisions of the Supply Chain Sourcing Obligations Act and the Supplier Code of Conduct (Annex).

Delivery conditions

(1) Unless otherwise agreed, deliveries shall be made DDP (Incoterms 2020), to the place designated by KÖCO, including packaging.

(2) Each delivery shall be accompanied by a delivery note. The delivery note must be provided with the order number, article number and supplier number.



(3) Before the dispatching of any goods, KÖCO must be informed in writing of the value, weight and delivery date.

(4) Insofar as the contractor is required to provide material samples, test records, quality documents or other documents, the completeness of the delivery and service also presupposes the handover of these documents.

(5) KÖCO shall not be obliged to accept partial or excess deliveries that have not been contractually agreed.

(6) If KÖCO incurs costs as a result of the defective delivery of the contract's subject matter, in particular, transport, travel, labour, material costs or costs for an incoming goods inspection exceeding the usual scope, the contractor shall bear these costs.

Delivery dates

(1) Delivery dates are binding. KÖCO shall not be obliged to accept the goods before the expiry of the delivery date. In the event of premature delivery, the contractor shall have the right to return the delivery at the contractor's expense or to store it at the contractor's expense and risk. Periods of grace shall only be granted in compliance with the written form requirement.

(2) The contractor is obliged to inform KÖCO immediately in writing if circumstances arise (or become apparent) which indicate that the agreed deadline cannot be met. The obligation to meet the originally agreed deadlines remains unaffected.

(3) If the contractor is deemed to be in default of delivery for reasons for which it is responsible, KÖCO shall be entitled to charge the contractor a contractual penalty of 0.1 % of the contractually agreed price per calendar day of default, up to a maximum of 5 % of the order value (excluding VAT). Further claims for damages by KÖCO shall remain unaffected. KÖCO shall be entitled to claim the contractual penalty until payment is made to the contractor for the delivery affected by the delay. If (and to the extent that) interim dates have been agreed, the contractual penalty provision shall only apply to the contractually agreed final delivery date. The time of delivery may also be the time of completion, provided that a contract for work and services exists. Further legal claims, such as withdrawal or damages instead of performance, remain reserved.

Moreover, the contractor shall be entitled to prove that the actual damage was less than the contractual penalty.

Transfer of risk

The risk shall be transferred to KÖCO upon arrival of the delivery at the agreed place of delivery – even in the case of agreed delivery ex works or shipment at KÖCO's expense.



Notice of defects

(1) KÖCO shall inspect incoming goods for defects in the ordinary course of business, and within a reasonable period of time. In principle, a visual inspection and a rough check of the quantity or weight are considered sufficient. In the case of larger quantities, the inspection shall, in any case, be limited to random samples.

(2) If defects are discovered by KÖCO after delivery, any notification of defects within 14 days after discovery of a defect shall be deemed to have been made in good time.

Warranties and product liability

(1) The contractor guarantees compliance with the contractual obligations with regard to the quality of the products to be delivered and, moreover, the suitability of the products for the use assumed under the contract. KÖCO shall – as far as possible and reasonable – afford the contractor the opportunity for subsequent performance by rectification of defects or new delivery at KÖCO's discretion. In the event of reversal, the return delivery shall be made at the expense of the contractor. The risk of accidental loss or damage shall pass to the contractor upon receipt of the declaration of withdrawal. In cases of imminent danger or special urgency, KÖCO shall be entitled to remedy the defect itself or have it remedied at the expense of the contractor.

(2) Warranty claims shall become statute-barred three years after delivery/acceptance.

(3) In the event of product liability in accordance with the Product Liability Act or corresponding statutory provisions, the contractor shall indemnify KÖCO upon first request against all claims made by third parties against KÖCO as the manufacturer, insofar as the contractor is responsible for the product damage, and this was caused within its sphere of control and organisation. The contractor shall bear all costs and expenses incurred by KÖCO in connection with the legal defence. In all other respects, the statutory provisions shall apply.

Waste disposal

Insofar as waste arises in the course of the contractor's performance of the contract, the contractor shall recycle or dispose of the waste at its own expense in accordance with the provisions of waste legislation, unless otherwise agreed in writing. Ownership, risk, and responsibility under waste law shall pass to the contractor at the time the waste is generated.

Prices/Invoicing

(1) The prices stated in the order are binding and include packaging, insurance, freight and customs costs.



(2) The invoices – to be issued in duplicate – must comply with the statutory requirements and are to be sent separately by order to the invoice address stated in the order after fulfilment of the contract. Order numbers are to be indicated. All settlement documents must be enclosed.

(3) Electronic invoices must meet the pertinent statutory requirements for entitlement to input tax deduction (digital signature).

(4) Invoices that are not in order, or cannot be audited, do not lead to an obligation to adhere to stated payment deadlines.

(5) Invoices for partial services are inadmissible unless otherwise agreed. Invoices for partial services shall always be expressly marked as such.

(6) Original invoices must not be enclosed with the delivery of goods.

Terms of payment

(1) Payments shall become due only after complete receipt of goods and invoice, as well as delivery or, at the earliest, the occurrence of the agreed delivery date. If the contract's subject matter is the performance of a work, formal acceptance shall take the place of delivery.

(2) Unless otherwise agreed, payments shall be made within 30 days of delivery and receipt of invoice with a 3% discount or within 60 days net.

(3) The deduction of a discount is also permissible if KÖCO offsets (or withholds) payments in an appropriate amount due to defects; the payment period begins after the defects have been fully remedied.

(4) Payments do not imply recognition of the performance as being in accordance with the contract.

(5) KÖCO shall only be in default if payment is not made in response to a reminder sent by the contractor after the due date.

(6) If advance payments have been contractually agreed, these advance payments shall not be due until KÖCO has received a directly enforceable, unlimited, unconditional advance payment guarantee for the advance payment amount from a bank, insurance company or savings bank under public law subject to the supervision of the Federal Office for Financial Services, which is due on first demand and waives the defence of action in advance.

Offset/Assignment

(1) KÖCO shall be entitled to the statutory rights of offset and retention. KÖCO shall be entitled to offset all claims which a company of the KÖCO Group has against the contractor against claims arising from the individual orders.



(2) Insofar as KÖCO is entitled to claims against other companies belonging to the contractor's group, KÖCO shall be entitled to withhold payments until the claims against this company have been settled.

(3) Assignments and other transfers of rights and obligations of the contractor outside the scope of application of Section 354 a German Commercial Code (HGB) are excluded. The contractor may only declare an offset or assert a right of retention on account of undisputed or legally established claims.

Rights of use and protection

(1) KÖCO may use the subject matter of the contract – including the underlying patent and other industrial property rights – without restriction and for an unlimited period for the intended use. This right of use shall also entitle the contractor to make changes to the subject matter of the contract and also includes illustrations, drawings, calculations, methods of analysis, recipes and other works produced or developed by the contractor during the conclusion and performance of the contract. For the purpose of rebuilding spare and reserve parts, as well as for the purpose of modification, KÖCO may hand over the contractor's relevant documents to third parties.

(2) The contractor guarantees that the rights of third parties – in particular, of its subcontractors – do not conflict with the granting of the right of use and shall indemnify KÖCO against all claims in this respect upon first written request. The scope of indemnification shall also include expenses incurred by KÖCO in connection with the claim by a third party.

(3) The limitation period for the obligation to indemnify for freedom from conflicting property rights is 10 years, calculated from the conclusion of the contract.

Retention of title/Provision/Tools

(1) If KÖCO provides parts to the contractor, KÖCO shall retain title thereto. Processing or transformation by the contractor shall be carried out for KÖCO. If these parts are processed with other items not belonging to KÖCO, KÖCO shall acquire co-ownership of the new item in the ratio of the value of the item (purchase price plus VAT) to the other processed items at the time of processing.

(2) If the parts provided by KÖCO are inseparably mixed with other items not belonging to KÖCO, KÖCO shall acquire co-ownership of the new item in the ratio of the value of the parts (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the contractor's item is to be regarded as the main item, it shall be deemed agreed that the contractor shall transfer proportional co-ownership to KÖCO; the contractor shall keep the sole ownership or the co-ownership for KÖCO.



(3) Insofar as the security rights to which KÖCO is entitled in accordance with Paragraph 1 and/or Paragraph 2 exceed the purchase price of all goods subject to retention of title that have not yet been paid for by more than 10 %, KÖCO shall be obliged to release the security rights at KÖCO's discretion upon the contractor's request.

(4) Insofar as the contractor is contractually obliged to manufacture tools/automatic machines, these shall become the property of KÖCO after completion and payment of the manufacturing costs. If the tools/automatic machines for the production of parts remain with the contractor, the handover of the tool/automatic machine shall be replaced by the contractor possessing the tools/automatic machines for KÖCO, and KÖCO subsequently acquiring indirect possession. The tools/automatic machines shall be provided to the contractor by KÖCO for production purposes only. KÖCO shall be entitled to demand the return of the tools/automatic machines from the contractor at any time. In addition, the regulations mentioned in Paragraph 5 shall apply.

(5) KÖCO shall retain ownership of the tools/automatic machines provided to the contractor. The contractor shall be obliged to use the tools/automatic machines exclusively for the production of the goods ordered by KÖCO. The contractor shall also be obliged to insure the tools/automatic machines belonging to KÖCO at replacement value against fire, water and theft damage at its own expense. At the same time, the contractor hereby assigns to KÖCO all claims for compensation arising from this agreement; KÖCO hereby accepts said assignment. The contractor shall be obliged to carry out any necessary maintenance and inspection work on KÖCO's tools/automatic machines, as well as all maintenance and repair work at its own expense and in good time. The contractor shall notify KÖCO immediately of any malfunctions; should he be in culpable breach of this obligation, claims for damages shall remain unaffected.

(6) All documents handed over by KÖCO shall remain the property of KÖCO. They may not be made accessible to third parties, and must be returned to KÖCO in full, unsolicited, after execution of the contract. Special experts and subcontractors engaged by the contractor shall not be deemed to be third parties if they have undertaken to maintain secrecy vis-à-vis the contractor in the same manner. The contractor shall be liable for all damages incurred by KÖCO as a result of the breach of this obligation.

Secrecy and data protection

(1) The contractor shall be obliged to keep all technical and commercial information from and about KÖCO – which it receives during the performance of the contract – strictly confidential. The aforementioned information may only be disclosed to third parties with the consent of KÖCO. The obligation to maintain secrecy shall continue to exist even after the contract has been completed. The obligation contained in this paragraph does not apply to information that was already known to the contractor upon receipt or that is publicly accessible.

(2) The contractor shall be obliged to comply with the statutory provisions on data protection – including the written obligation of employees – pursuant to Section 5 German Federal Data Protection



Act (BDSG). He shall also impose these obligations on all persons entrusted by him with the execution of the contract.

Publication/Advertising

An evaluation or disclosure of the business relations existing with KÖCO in publications (or for advertising purposes) shall only be permitted with the express prior consent of KÖCO.

Miscellaneous

(1) The place of performance for the contractor's services shall be the registered office of the KÖCO company placing the order, unless another place of delivery is specified.

(2) The contractual relationship shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(3) Insofar as the contractor is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the registered office of KÖCO shall be the exclusive place of jurisdiction for all disputes arising from the contractual relationship. However, KÖCO shall also be entitled to bring legal action at the contractor's place of jurisdiction.

If the contractor has its registered office outside the EU, the following shall apply: all disputes arising out of (or in connection with) this contract, or concerning its validity, shall be ultimately settled in accordance with the Rules of Arbitration of the German Institution of Arbitration (DIS), excluding the ordinary courts of law. Said arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be Frankfurt a.M., Germany.

(4) If any provision of these Terms and Conditions is (or becomes) invalid or unenforceable, the remaining provisions shall remain in full force and effect. The contracting parties are obliged to replace the invalid/unenforceable provision from the beginning of its invalidity/lack of enforceability with a provision that is as economically similar as possible.

Special Conditions for Contracts for Work and Services – Scope of

Application/Deviations

These Special Terms and Conditions shall apply in addition to the General Terms and Conditions of Purchase in the event of the existence of a Contract for Work and Services, a Contract for Work and Materials or a Contract for Services.



The receipt of the goods described in the General Terms and Conditions shall be replaced by the acceptance of the goods in the case of a Contract for Work and Labour or a Contract for Work and Materials and by the proper performance of the service in the case of a Contract for Services.

Change in performance

(1) The contractor shall notify KÖCO in writing without delay of any changes/extensions to the scope of the contract whose necessity only becomes apparent during the performance of the contract. The changes/extensions shall only become legally effective with the written consent of KÖCO.

(2) The contractor shall check change requests from KÖCO for possible consequences within 10 working days and inform KÖCO of the result in writing. In particular, the effects on the costs and the time and schedule must be shown. If KÖCO decides to implement said changes, the contracting parties shall amend the contract accordingly in writing.

Use of subcontractors

(1) The involvement of subcontractors and suppliers requires the prior written consent of KÖCO.

(2) Subcontracted goods shall be subject to the contractor's own quality control. The reference to the outgoing goods inspection at the supplier is not sufficient.

(3) If the contractor uses subcontractors without prior written consent, KÖCO shall have the right to withdraw from the contract, terminate it and/or claim damages.

Notification of concerns

The contractor shall be obliged to immediately notify KÖCO in writing of any objections to the intended type of execution, missing documents or to the performance of other contractors. By accepting the order, the contractor acknowledges that he has ascertained all requisite information regarding the type of execution and scope of the performance by inspecting the available documents. In the event of obvious errors, spelling mistakes or miscalculations in the documents submitted by KÖCO, etc., KÖCO shall not be liable.

Change of staff

(1) KÖCO shall be entitled to demand a replacement of the personnel working on KÖCO's premises for good cause. This applies, in particular, if there are comprehensible doubts regarding the experience and/or qualification of said personnel, or if occupational safety/environmental protection regulations are not observed. In this case, the contractor undertakes to provide a qualified replacement without delay and free of charge for KÖCO. The agreed dates remain unaffected by this.

(2) Any replacement of personnel by the contractor shall require the prior consent of KÖCO.



Entering the factory premises

- (1) Entry into the factory premises must be announced in good time.
- (2) The instructions of KÖCO's specialist personnel must be followed.

Acceptance

- (1) In the case of a Contract for Work and Services or a Contract for Work and Materials, KÖCO shall formally accept the goods/services within a reasonable period of time. The use or commissioning of the goods/services shall not be deemed to be acceptance.
- (2) In all other respects, the statutory provisions shall apply.

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