

KOMET GROUP GmbH - General Terms and Conditions of Purchase

1. Scope of Application

1.1 All our orders shall be subject exclusively to the following terms and conditions of purchase payment (hereinafter referred to as "Purchase Conditions"). We do not accept any Supplier's terms and conditions contrary hereto or deviating herefrom, or relating to matters which are not regulated in these Purchase Conditions unless we have expressly agreed in writing. This shall also apply if, in full awareness of such contrary or deviating Supplier's terms and conditions or of matters not laid down herein, we accept delivery without reservation or if the Supplier refers in its quotation, order confirmation, invoices or in any other context when performing the contract to the application of its terms and conditions and we do not explicitly object to their incorporation. Within the scope of current business relations, the Purchase Conditions shall also apply to repeat orders.

1.2 Our Purchase Conditions shall only apply to an entrepreneur as defined in Article 14 BGB (German Civil Code).

2. Quotation - Order - Execution of Contract

2.1 In making its quotations, the Supplier shall adhere to the particulars our inquiry. The Supplier shall expressly point out in writing any deviations in the quotation - particularly in the event that the Supplier is not able to fulfil one or several particulars of our inquiry.

2.2 Our orders will only be placed in writing. Preliminary orders communicated verbally or by phone will be acknowledged in writing (including transmission by telex or e-mail).

2.3 The Supplier shall acknowledge acceptance of our order immediately in writing, stating the date of delivery and the price, and quoting our order number.

2.4 When the Supplier leaves illustrations, drawings, calculations and any other documents relating to products, applications or projects we are entitled to reproduce those documents or to make them accessible to third parties.

3. Delivery Conditions - Time and Periods

3.1 Unless otherwise agreed, the delivery shall be made DAP (INCOTERMS 2010) referring to the place named in our order. If there is named no place in our order the delivery shall be made DAP Besigheim, Germany.

3.2 The lead times and dates stated in our order shall be binding. The date of delivery shall be the date on which we receive the goods or on which they arrive at the delivery address named by us, on performing acceptance.

3.3 If the Supplier becomes aware of circumstances which will render adherence to agreed lead times or dates impossible, Supplier shall inform us immediately in writing about the reasons and the anticipated duration of the delay, even if the Supplier is not responsible for such circumstances. Neither notification nor silence regarding such information constitutes an approval of a new delivery date or affects our contractual and statutory rights and claims.

3.4 If the Supplier is in default we shall be entitled to demand a flat rate compensation for damage caused by delay of 0.5% of the value of the deliveries resp. services ordered with which the Supplier is in default for each commenced week from the date on which the delay started. We shall be entitled to demand a flat rate compensation for damage caused by delay up to a maximum of 5% of the entire contract value. Both parties are permitted to provide evidence that the damage caused was more or less substantial or that no damage was caused at all.

3.5 In the event of a premature delivery we reserve the right to return goods at the expense of the Supplier. In the case that goods from such a premature delivery are not returned we are entitled to store the goods with us at the Supplier's expense and risk until the delivery date. In the event of a premature delivery we reserve the right to effect payment not before the due date.

4. Prices

4.1 All prices shall be fixed prices for the total contractual time of performance, exclusive of VAT which shall be charged separately. Unless otherwise explicitly agreed, the prices are not subject to any subsequent changes. This shall also apply to unit and lump sum prices.

4.2 Unless otherwise agreed, the price shall include freight (delivery "free domicile"), transport insurance, packaging and its disposal (in line with statutory law).

5. Intervention of Third Parties - Partial Deliveries - Packaging

5.1 The Supplier has to inform us in writing if the Supplier intends to pass on the order to third parties or to call in subcontractors.

5.2 At the request of our ordering department, notice of shipment shall be given by sending an advice of dispatch at the latest on the departure of the goods.

5.3 A delivery note in duplicate shall be enclosed with each delivery.

5.4 Our dispatch address, our order number and the date of the order must be specified in advices of dispatch, delivery notes, consignment notes and parcel addresses.

5.5 Partial deliveries or partial services shall be permitted only with our express written consent. If we exceptionally accept a partial delivery or partial service this shall not be deemed as a waiver of any possible claims.

5.6 The Supplier must pack the goods properly. In any way the Supplier must pack the products in such a way that a damage of the goods is impossible.

Unless otherwise agreed, the Supplier must load, retain and fasten the products securely for transport. The loading must be made in such a way that it is impossible that during the discharge the products dedicated for us, other products which will not be delivered to us and other objects may be damaged. The agreements between the Parties regarding transfer of risk remain unaffected by this Section 5.6.

5.7 The Supplier shall take back transport packaging at our request at any time, free of charge even if we have asked for delivery in transport packaging. If transport packaging is not taken back when delivery is made, or collected within two weeks thereof, we shall have the right to send back or dispose of the packaging material at the expense of the Supplier.

6. Invoicing - Terms of Payment

6.1 The invoice shall be sent under separate cover together with a duplicate clearly marked as such. The invoice shall show our reference number, our order number and the date of our order; all invoices shall comply with the provisions of the Umsatzsteuergesetz (German Sales Tax Law).

6.2 Unless otherwise agreed, payment shall be made within fourteen (14) days with a 3% discount, or within thirty (30) days net. The period shall commence on the date on which we receive the correct and plausible invoice but not before the date of delivery or provision of the service.

6.3 The deduction of agreed discounts shall be permitted also if we offset or if we are entitled to withhold payments due to defects of quality or title.

6.4 Our payments shall always be made subject to correction or to return of the goods in the event that the calculation later turns out to be incorrect or objections are raised, and on condition that the goods are duly received. Payment shall not be construed as an acknowledgement that a delivery or service is in conformity with the contract.

7. Inspection of Incoming Goods - Notifications of Defects

7.1 Our obligations of inspection of incoming goods require only the following examinations: quantity, identity and transportation damage. The Supplier waives any possible defence on grounds of a breach of an obligation to inspect incoming goods (especially pursuant to § 377 HGB (German Commercial Code)).

7.2 When we assess in connection with a sampling inspection a defect we shall have the right at our option, either to reject the whole delivery without any further inspection or to perform another inspection by us or by a third party. The Supplier shall bear all costs of the additional inspection.

7.3 The Supplier has to deliver the goods 100% inspected. Prior to delivery, the Supplier shall especially check that the goods comply with the specifications given in the order and that they are free of defects.

8. Standards of Quality - Defects of Quality - Damages

8.1 All delivered goods must be in accordance with specifications, drawings and other particulars laid down in the order as well as statutory provisions, safety regulations, relevant rules and guidelines of professional associations, trade supervision authorities and the TÜV (technical inspection association) and the most recent version of VDI guidelines, their sub-groups, as well as national and international standards (e.g. DIN, CEN, or ISO standards) in their respective applicable version, such as are in force at date of delivery. In particular, the Supplier shall also comply with and adhere to all environmental protection provisions within the scope of the obligations it must perform especially the list of materials to be declared according to VDA 232-101 or any similar or follow-up regulation.

8.2 The Supplier must observe all applicable German and European regulations concerning the delivery, availability and/or attachment of technical or other documents, operation instructions, operation or other manuals, labelling and explanations. If required by law Supplier has to provide us with proper operation manuals regarding the goods supplied in German and English and on demand with operation manuals in French, Italian, Spanish, Chinese and Japanese. We are entitled to use the operation manuals provided by the Supplier in whole or in part. This applies in particular to the involvement of the operation manuals into overall operation manuals.

8.3 Insofar as we or our customer requires the introduction, preparation and management of data sheets for materials, and other certificates relating to products and/or production, the Supplier shall also fulfil this obligation with respect to the products it is to deliver to us, and shall provide us with all the information, data and documents that we need for ourselves respectively that we need in order to satisfy our customer's expectations.

8.4 At our request, the Supplier shall provide a sample, a first sample inspection report, a specimen and specification sheets. The characteristics of the sample or specimen and the data in the specification sheets shall be deemed agreed. The same shall apply to data in works certificates. The Supplier shall carry out all the checks required for manufacturing safety and for achieving the warranted quality and characteristics, and shall furnish proof thereof to us on request. It shall agree to enter into a quality assurance agreement with us at our request.

8.5 In case of doubt the Supplier has to make inquiries about the intended use or the way of further processing.

8.6 Claims on grounds of defects of quality shall be subject to a limitation period of two years commencing with the passage of risk, unless a longer limitation period is legally required or agreed.

8.7 A limitation of our statutory claims on grounds of defects is barred. In the case of sales contracts and contracts for work and materials, we may immediately demand, at our option within a reasonable time period, the elimination of the defect or the delivery of a defect-free product. In urgent cases (if the Supplier is in default regarding the elimination of a defect or when we are facing extraordinary damages - provided that we have set the Supplier a reasonable time period for improvement -) we shall be entitled - even if Sales Contract Law is applicable - to eliminate the defects by ourselves or to have them eliminated by third parties at the expense and risk of the Supplier. If Sales Contract Law is applicable this does not apply if the Supplier is not responsible for the defect. In such cases, the Supplier shall reimburse us for the required costs and expenses.

The Supplier shall bear especially all cost and expenses incurred in connection with the identification and the removal of the defects - also if they incur at us - especially cost for investigation, disassembly and reassembly, work, material, transport and all other cost for subsequent improvement and subsequent delivery. This shall also apply if the expenses are higher due to the fact that the object of delivery was placed at another place as the place of performance; however this shall not apply if disproportional cost will incur. The kind of sup-

plementary performance chosen by us as well as the supplementary performance itself may not be declined by the supplier on the grounds that disproportional cost will incur provided that the cost of the (chosen) supplementary performance will not exceed the initial price for the product affected more than three times.

8.8 In addition, the statutory provisions concerning the delivery of defective materials shall apply. The enforcement of further claims resulting from the delivery of defective materials remains unaffected.

9. Limitation of Liability - Product Liability - Indemnity - Liability Insurance Coverage

9.1 The Supplier shall be liable - irrespective of the legal basis - in accordance with statutory law and these Purchase Conditions without any limitation. We do not agree to any restriction and/or limitation of our statutory and contractual claims (in particular as a result of delay, defects and product liability) either with respect to fault criteria or with respect to the scope and the amount of liability.

9.2 The Supplier has to save us harmless against claims for damages of third parties made with regard to producer's liability if the defect is caused by a product delivered by the supplier and insofar as the Supplier cannot disprove that the cause occurred within its area of manufacture or its organization. This claim does include the costs of a recall action.

9.3 Supplier shall also draw our attention to the risks involved in the event that its product is not used for the intended purpose.

9.4 The Supplier undertakes to maintain product liability insurance with a yearly insured sum of at least Euro 2.5 million per bodily injury/damage to property and pecuniary damage on a global basis and to provide us on demand with evidence without delay. This shall not affect more extensive claims which may be due to us.

10. Withholding and Off-Set - Assignment

10.1 In the event of defective delivery or service, we shall have the right to withhold payments in full unless good faith otherwise requires.

10.2 The assignment of claims against us shall be legally effective only with our written consent.

10.3 We shall not agree to any limitation of our statutory rights to offset and withhold payments.

10.4 The Supplier is only entitled to offset and to exercise a right for retention if its counterclaims (a) have been confirmed by final court judgement, (b) are uncontested, (c) are acknowledged by us, or, (d) if its counterclaims are in a close reciprocal (synallagmatisch) relation to our claims. Furthermore the Supplier is entitled to exercise a right of retention only if his counterclaim is based on the same contractual relationship.

11. Manufacturing Equipment and Manufacturing Materials - Drawings - Provision of Materials

11.1 All manufacturing equipment we have provided to the Supplier, particularly tools, measuring and manufacturing devices (hereinafter referred to as "Manufacturing Equipment") and manufacturing materials (hereinafter referred to as "Manufacturing Materials") shall remain our property; the Supplier shall use the Manufacturing Equipment exclusively for the manufacture of our order and shall insure the Manufacturing Equipment at its replacement value against damage by fire, water and theft at its own expense.

11.2 The parties hereby agree that title to all Manufacturing Equipment and all Manufacturing Materials that we ask the Supplier to manufacture or have manufactured shall pass to us insofar as we pay the costs of manufacture to the Supplier as agreed.

11.3 Until full completion of the order, the Supplier shall store Manufacturing Equipment and Manufacturing Materials for us free of charge, service it at its own expense and keep it in good working condition by timely repairs and subsequent certification at its own expense. If the Manufacturing Equipment cannot be restored to good condition, we shall supply a replacement at our expense if the Manufacturing Equipment has become useless through normal wear. The Supplier is liable for all damages of the Manufacturing Equipment and Manufacturing Materials due to intentional or negligent breach of duty; in this case the Supplier is obliged in particular to reimburse us for the costs of the replaced Manufacturing Equipment and Manufacturing Materials. The Supplier must hand over the Manufacturing Equipment and the Manufacturing Materials to us free of charge at our request at any time.

11.4 If we provide the Supplier with products, raw materials or other materials (hereinafter together referred to as "Provisions") for the manufacturing of products we reserve ownership regarding these Provisions. Any processing, joining, conversion, mixing, installation or remodelling of our Provisions by the Supplier shall always take place for us as manufacturer but without any obligation for us. If our Provisions will be processed with other objects not in our ownership we shall acquire co-ownership in the new product in proportion of the value of our Provisions (purchase price plus VAT) to the other objects processed at the time of processing. If our Provisions are combined or mixed inseparably with other objects not in our ownership we shall acquire co-ownership in the new product in proportion to the value of our Provisions (purchase price plus VAT) to the other combined or mixed objects at the time of combining or mixing. If combining or mixing occurs in such a way that the Supplier's objects are to be considered as the main objects Supplier shall transfer co-ownership to us proportionately. The Supplier shall store and keep the objects subject to our (co)ownership in our name and free of charge.

11.5 Unless otherwise agreed, illustrations, drawings, calculations and any other documents relating to products, applications or projects which contain valuable know-how shall remain our property and shall be subject to our copyright even if we place them at the Supplier's disposal. Without our express prior consent, they may be neither reproduced nor made accessible to third parties.

12. Reservation of title

We shall not agree to stipulations of reservation of title which go beyond a simple reservation of title, in particular, to expanded or extended reservations of title or group reservations of title.

13. Industrial property rights

13.1 The Supplier shall warrant that no rights of third parties, particularly no industrial property rights are infringed in connection with its delivery. This applies to the place of production and the place of delivery as well as for all countries in which the products of the Supplier or KOMET-products - in which the products of the Supplier are contained or integrated - will be distributed or placed.

13.2 If a third party asserts a claim against us on grounds of an infringement of such rights, the Supplier shall save us harmless against such alleged or actual claims unless the Supplier is not responsible for the infringement. In such a case the Supplier has to reimburse us for all damages and the necessary costs and expenses we have incurred through or in connection with the claims made by the third party.

13.3 Furthermore our claims for defects of title shall be governed according to Article 8.

14. Export Control and Customs

14.1 The Supplier must inform us about possible obligations to obtain a permit in case of (re)exports of its products according to German, European, US-export and customs regulations and about the export and customs regulations of the place of origin in its business documents. For this the Supplier must provide in its quotations, order confirmations and invoices at least the following information:

- the export list number according to Exhibit AL of the German Foreign Trade Regulations or comparable list positions of relevant export lists,
- in case of US products the ECCN (Export Control Classification Number) according to US Export Administration Regulations (EAR),
- the trade political origin of its products and of its elements inclusive technology and software,
- if the products were transported in the US, were produced or stored in the US or were produced by use of US-technology,
- the statistic product number (HS-code) of its products, and
- a contact person in its company for the clarification of possible questions.

On demand the Supplier must inform us in written form about all export data regarding its products and their elements; in addition the Supplier must inform us immediately - prior to the delivery of affected products - about any change of the aforementioned information.

14.2 The Supplier must issue a supplier's declaration according to EC directive No. 1207/2001 about the origin of the products. This shall also apply for any further products added during the validity period of the supplier's declaration. The Supplier shall be liable for any disadvantages and damages due to a culpable improper or delayed delivery of the supplier's declaration. If necessary, the Supplier shall proof the details of origin by use of a disclosure form (Auskunftsblatt) approved by its custom office (Zollstelle).

If the legal requirements for the delivery of a supplier's declaration are not given the Supplier shall inform and provide us with an appropriate statement.

15. Labelling of Goods - Secondary Packaging

Unless explicitly agreed otherwise, we are entitled to attach our labels (e.g. product name, article number etc.) and our trademarks in addition to the label of the Supplier prior to the resale or further use of the delivered goods. In addition we are entitled to pack the products delivered into a Komet-packaging while retaining all warning and hazard notices prior to the resale or further use of the delivered goods. The Supplier agrees to this procedure.

16. Compliance with Laws

For the duration and in the performance of a contract concluded with us, Supplier ensures to comply with the applicable laws, decrees and other statutory provisions and commercial customs applicable to the business sector of the Supplier, including without limitation with respect to development, manufacture, sale, transport, export and certification of its Products as well as provisions with respect to technical and environmental safety relating to manufacture and processing of technical products, the generally accepted Rules of the Art and all other specifications reflecting the State of the Art at the time of the individual supply. Upon request, the Supplier shall confirm the compliance with the aforementioned laws etc. in writing. The Supplier shall reimburse us for all damages and costs which result of the non-compliance of the aforementioned regulations by the Supplier and shall indemnify us from any third party claims raised against us in connection therewith.

17. Concluding provisions

17.1 The contractual relationship shall be subject to the laws of the Federal Republic of Germany without giving effect to its conflict of laws principle. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

17.2 In transactions with entrepreneurs, the Amtsgericht (local court) Besigheim is agreed to be the place of jurisdiction for legal actions falling within the subject-matter jurisdiction of Amtsgerichte (local courts), and the Landgericht (regional court) Stuttgart for legal actions which fall within the subject-matter jurisdiction of Landgerichte (regional courts). We are also entitled to start a legal action at Supplier's domicile.

17.3 The data provided by the Supplier shall be stored and processed by means of EDP insofar as this is permissible under Articles 28, 29 of the Bundesdatenschutzgesetz (BDSG, German Federal Data Protecting Act).