

# General Purchasing Conditions of KOHLER Maschinenbau GmbH

## 1. Validity

- 1.1. The General Purchasing Conditions (hereinafter referred to as **Purchasing Conditions**) shall apply to all contracts between the supplier and KOHLER Maschinenbau GmbH (hereinafter referred to as the **Purchaser**) concluded by KOHLER Maschinenbau GmbH as Purchaser or customer for the acquisition of materials, objects, products, software, and any services related thereto (hereinafter referred to as **Objects of Delivery**). Contracts are generally formed between KOHLER Maschinenbau GmbH and the supplier. Only the contracting companies are subject to the obligations under the contract.
- 1.2. The Purchasing Conditions shall apply only to contracts with entrepreneurs (sec 14 of the German Civil Code [“BGB”]), legal entities under public law, and special funds under public law within the meaning of sec 310 sub-sec 1, 1<sup>st</sup> sentence of the Civil Code.
- 1.3. These Purchasing Conditions shall be deemed accepted and incorporated into the contract upon acknowledgement of an order by the supplier, and in any case upon delivery.
- 1.4. Contracts shall be based exclusively on these Purchasing Conditions. Any deviating, conflicting, or supplementary general terms and conditions of suppliers shall not apply even if the Purchaser does not explicitly object to their application in any given case. Any acceptance, without reservation, of order confirmations or deliveries on the part of the Purchaser shall not be deemed recognition of any deviating terms and conditions.
- 1.5. Any relevant statements to be made or notices to be given to the Purchaser by the supplier after conclusion of a contract shall be valid only when made in writing (e.g., by letter or email).
- 1.6. Incoterms<sup>®</sup> to which reference is made in these Purchasing Conditions shall apply in the version as amended from time to time.

## 2. Conclusion of contracts

- 2.1. On principle, contracts are concluded in the form of a binding order issued by the Purchaser (offering conclusion of a contract) and acknowledgement of the order by the supplier (acceptance).
- 2.2. Orders and call-forward notices, as well as any modifications or amendments thereto, shall be valid only when made in writing.
- 2.3. Unless otherwise agreed upon, the Purchaser shall be bound by orders for 7 working days from the date of the order. Late acceptance by the seller shall be deemed a new transaction and shall be subject to acceptance by the Purchaser.
- 2.4. Call-forward notices shall become binding 14 days after the date of the call-forward notice, at the latest, unless the supplier objects in writing within the said period.

## 3. Delivery and default of delivery

- 3.1. The delivery periods stated in orders shall be binding. If no term of delivery is stated in an order and has not been agreed otherwise, it shall be 2 weeks from the conclusion of the contract.
- 3.2. Delivery shall be deemed made in due time when received at the destination/place of delivery according to Incoterms<sup>®</sup> within the specified time. Unless otherwise agreed in writing, delivery shall be made DDP business address of the Purchaser. When acceptance has been agreed, the decisive date shall be the date of acceptance by the Purchaser. The destination of a delivery shall also be the place of performance of any supplementary performance (obligation to be performed at the place of business of the recipient).
- 3.3. Even without a reminder being sent, the supplier shall be considered in default if it fails to comply with any binding date of delivery. Independently thereof, the supplier shall inform the Purchaser forthwith in writing if – for whatever reason – it will probably not be in a position to make delivery in due time, providing information on the reasons of such a delay in writing. However, this shall not affect the supplier’s responsibility for meeting the deadline for delivery.
- 3.4. In case of any default of delivery on the part of the supplier, the Purchaser shall be entitled to a contractual penalty of 0.5 % of the net contract value per full week of default, however not more than 5 % in total of the net contract value of the goods delivered late.

Even if the Purchaser does not state upon receipt of the delivery or supplementary performance that it reserves the right to claim a contractual penalty, such a penalty may still be claimed provided that the relevant statement is made in advance of final payment.

- 3.5. The present agreement on a contractual penalty and asserting a claim to such a penalty shall not affect the contractual and statutory claims and rights to which the Purchaser is entitled in case of default. The contractual penalty shall be added to the damages payable by the supplier for any loss caused due to default.

## 4. Passage of risk, dispatching, passage of ownership

- 4.1. The risk shall pass to the Purchaser upon receipt of the consignment at the destination/place of delivery according to Incoterms<sup>®</sup>. When acceptance has been agreed, the risk shall pass to the Purchaser upon acceptance by the Purchaser. Unless otherwise agreed in writing, delivery shall be made DDP business address of the Purchaser.
- 4.2. Each delivery shall be accompanied by packing slips or delivery notes stating the content and the complete order reference numbers. To the extent required by law, the supplier shall additionally submit the export control classification numbers of dual-use goods to the Purchaser.
- 4.3. Ownership shall pass to the Purchaser upon delivery or acceptance.

## 5. Rights of use

- 5.1. The supplier grants the Purchaser the non-exclusive, transferable, world-wide, and perpetual right to use the Objects of Delivery including the pertaining documentation, to incorporate such objects into other products and to distribute them.
- 5.2. If and to the extent that the supplier manufactures any Objects of Delivery to Purchaser specification, the Purchaser shall be granted an exclusive licence to make use of all rights of use, copyrights, industrial property rights and any other results of work created within the framework of the production of such Objects of Delivery free of charge, without any limitation with respect to time, territory, and contents, and to grant sublicences to any such rights. Applying for patents for inventions shall be the exclusive privilege of the Purchaser.
- 5.3. The supplier grants the Purchaser the non-exclusive, transferable, world-wide, and perpetual right
  - 5.3.1 to install, put into operation, test, and operate software including the pertaining documentation (hereinafter collectively referred to as Software);
  - 5.3.2 to sublicense the right of use according to point 5.3.1 to affiliated companies as defined in sec 15 of the Corporations Act (“AktG”), third parties acting upon its instructions, distributors, and final customers;
  - 5.3.3 to grant affiliated companies as defined in sec 15 of the Corporations Act and other distributors a licence to grant final customers the right of use according to point 5.3.1;
  - 5.3.4 to incorporate the Software into other products, to copy it or have it used or copied by affiliated companies as defined in sec 15 of the Corporations Act, third parties acting upon its instructions or other distributors;
  - 5.3.5 to distribute, sell, rent, and lease the Software, to provide it for download or to make it available to the public, and to copy the Software for this purpose and to the extent required, provided that the number of simultaneously used licences does not exceed the number of acquired licences at any time;
  - 5.3.6 to sub-licence the right of use according to point 5.3.5 to affiliated companies as defined in sec 15 of the Corporations Act, third parties acting upon its instructions or distributors.
- 5.4. In addition to the rights granted in point 5.3, the Purchaser, affiliated companies as defined in sec 15 of the Corporations Act, and distributors shall be authorised to grant permission to final customers to transfer specific licences.

- 5.5. All sublicences granted by the Purchaser must provide for adequate protection of the supplier's intellectual property rights in the software by using the same contractual provisions as used by the Purchaser for the protection of its own intellectual property.
- 5.6. Any development of customised software shall be subject to separate agreements between the parties.
- 6. Prices, invoicing, and payment**
- 6.1. Prices as stated in the order shall be binding. All prices are inclusive of the statutory turnover tax unless the said tax is shown separately. Unless otherwise agreed upon, prices shall include all incidental costs of transportation including proper packaging, insurance, and other incidental costs, as well as costs of installation, trial operation, training, and import and export duties.
- 6.2. Invoices stating the order number shall be prepared without delay after shipping the goods.
- 6.3. Payment will be made 14 days after complete delivery and performance of services (including acceptance if agreed upon) and receipt of a proper invoice, with a cash discount of 3 % being deducted, or net 30.
- 6.4. The Purchaser shall not owe any interest payable after due date. With respect to default of payment, the statutory provisions shall apply.
- 6.5. Payment shall not be deemed recognition of proper delivery of goods or provision of services according to contract.
- 6.6. The supplier may only offset a claim of the Purchaser if the claim of the supplier is uncontested or has been established by final judgment; the supplier may assert a right of retention only subject to the condition that it shall be based on claims under the same contract which are uncontested or have been established by final judgment.
- 7. Copyright, confidentiality**
- 7.1. The Purchaser reserves property rights and copyrights in relation to all documentation (e.g., documents, plans, drawings, calculations, graphic representations, samples, specimens, models, designs, and any similar objects), even when stored in electronic form, as well as to any confidential drafts, concepts, and ideas provided to the supplier or paid for by the Purchaser (hereinafter referred to as Documentation). Such Documentation shall not be surrendered or otherwise disclosed to unauthorised parties and shall be returned to the Purchaser or destroyed or deleted according to the Purchaser's instructions upon completion of performance of the contract. In the latter case, a written confirmation of destruction or deletion shall be submitted to the Purchaser. In case deleting would require unreasonable technical efforts (e.g., deleting backups), the supplier shall protect such Documentation sufficiently to rule out any abuse or unauthorised access. Copying any such objects shall only be permitted to meet operational requirements, with the limits of copyright law always being observed.
- 7.2. The supplier shall keep the Purchaser's business secrets within the meaning of sec 2, sub-sec 1 of the Business Secrets Act ("*GeschGehG*"), as well any confidential information, knowledge, and Documentation such as e.g. technical and other data, measured values, technology, trade experience, trade secrets, knowhow, compositions, and any other Documentation (collectively referred to as Confidential Information) entrusted or becoming known to it secret, independently of whether or not any of the aforesaid has been explicitly designated as confidential, and shall refrain from publishing or disclosing any of the aforesaid. Not to be considered Confidential Information is: any information known or accessible to the public prior to being disclosed or submitted to the supplier or becoming known or accessible at a later date without breach of an obligation to maintain secrecy; or information provably known to the supplier prior to disclosure without breach of an obligation to maintain secrecy; information gained by the supplier without using or making reference to any Confidential Information of the Purchaser, or submitted or disclosed to the supplier by an authorised third party without breach of an obligation to maintain secrecy. This obligation shall survive the termination of the respective business relationship for a period of four years. The contents of contracts shall also be covered by this obligation.
- 7.3. The supplier shall not use or exploit or appropriate the Confidential Information for its own benefit or the benefit of others, or for any other purpose than agreed upon by contract between the supplier and the Purchaser. With respect to products and objects, the supplier shall not obtain any Confidential Information by means of reverse engineering, observation, analysis, dismantling or testing.
- 7.4. The supplier shall disclose Confidential Information internally only to the extent required and only on a need-to-know basis. In particular, Confidential Information shall be disclosed by the supplier only to its employees obliged to maintain confidentiality or to its advisers bound by professional secrecy, and only to the extent that they deal with the contractual relationship with the Purchaser and reasonably need such information. The employees' attention shall be drawn to this clause in advance. The supplier shall take all required measures to ensure that all persons to whom any Confidential Information is disclosed and all persons having access thereto will deal with it in the same way as the supplier is obliged to do.
- 7.5. The supplier will also protect any Confidential Information against unauthorised access by third parties by means of adequate secrecy measures, and will comply with statutory and contractual provisions on data protection when processing Confidential Information. This shall also include technical protection measures, taking into account the state of the art (GDPR, Art. 32) and the commitment of staff to confidentiality and data protection. (GDPR, Art. 28 par. 3 letter b).
- 7.6. In case of any intentional or negligent breach of the aforementioned obligations of secrecy by the supplier, it undertakes to pay a reasonable contractual penalty in an amount to be fixed by the Purchaser at its reasonable discretion which shall be subject to review by the competent court in case of litigation. The amount of the contractual penalty in a given case shall be determined by taking into account the degree of confidentiality of the business secret or other Confidential Information concerned, as well as the number of unauthorised persons to whom the information was illicitly disclosed.
- 7.7. The Purchaser processes personal data according to the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Union (GDPR)) and other provisions on data protection in force, including but not limited to the Federal Data Protection Act ("*BDSG*"). All data will be treated confidentially. For more information, consult the privacy statement of KOHLER Maschinenbau GmbH at [kohler-germany.com/en/Privacy-Policy](https://www.kohler-germany.com/en/Privacy-Policy) providing a detailed overview of how personal data are processed.
- 8. Warranty and Product Liability**
- 8.1. Unless otherwise provided below, warranty shall be governed by the applicable statutory provisions.
- 8.2. According to the applicable statutory provisions, the supplier shall be liable inter alia for the goods having the agreed characteristics and quality upon passage of risk. The agreed characteristics shall be determined, in particular, according to the Documentation, such as, e.g., drawings, descriptions, and statements of the Purchaser concerning quality.
- 8.3. In derogation of sec 442 sub-sec 1 2<sup>nd</sup> sentence of the Civil Code, the Purchaser shall be entitled to raise claims for defects without any limitation, even if the Purchaser failed to recognise a defect upon conclusion of the contract due to gross negligence.
- 8.4. The commercial obligations of inspection and notification of defects shall be governed by the applicable statutory provisions (sections 377, 381 of the Commercial Code ("*HGB*")) subject to the following proviso: The obligation of inspection by the Purchaser shall be limited to defects becoming apparent through a visual inspection of the incoming goods with a simultaneous inspection of the delivery documents (e.g., transport damage, delivery of goods other than stipulated, and short delivery) or which can be detected by random sample quality control. In case acceptance has been agreed upon, there shall be no obligation of inspection. Furthermore, it is relevant whether an inspection is expedient according to proper business practices in a given case. This shall not affect the obligation of notification of defects detected at a later date. Notwithstanding the obligation of inspection, notification of a defect shall be deemed given without delay and in due time when

sent within seven working days from detecting a defect, and in case of overt defects, within seven days from receipt of the goods.

- 8.5. If product liability claims are asserted against the Purchaser, the supplier shall indemnify the Purchaser, and hold it harmless, if and to the extent that damage is to be attributed to a defect in the goods supplied by the supplier. In case of no-fault liability, this shall apply only if the damage is due to the supplier's fault. If the cause of damage is within the sphere of responsibility of the supplier, the supplier shall bear the burden of proof that the damage is not attributable to its fault.
- 8.6. The supplier undertakes to take out adequate product liability insurance.

## **9. Spare parts**

- 9.1. The supplier shall keep spare parts for the products supplied to the Purchaser on stock for a period of at least 10 years from delivery.
- 9.2. If the supplier intends to discontinue the production of spare parts for the products delivered to the Purchaser, it shall inform the Purchaser forthwith after the decision on discontinuation has been made. Subject to the preceding point 9.1, production shall not be discontinued for at least six months after the respective decision is made.

## **10. Choice of law, place of jurisdiction, compliance, miscellaneous**

- 10.1. All contracts shall be subject exclusively to the law of the Federal Republic of Germany excluding any conflict of law rules of private international law, and further excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 10.2. The place of performance, and the place of jurisdiction, shall be the place where the Purchaser has its headquarters.
- 10.3. The supplier states that it is committed to a business community free from corruption. The supplier undertakes to refrain from corrupt business practices and any other punishable offences, and to take all required measures to prevent any such practices. The supplier further undertakes to ensure compliance with statutory provisions, including but not limited to the law on due diligence obligations with respect to supply chains [*"Lieferkettensorgfaltspflichtengesetz"*], and internationally recognised standards for the protection of the environment as well as human rights standards, including but not limited to the prohibition of child labour, forced labour, and discrimination, provisions on minimum wages as well as safety standards and fundamental rights of employees throughout the entire supply chain of the Objects of Delivery. The supplier shall demonstrate compliance with these obligations by obtaining and submitting appropriate documents upon the Purchaser's request. The supplier shall obligate its sub-contractors to comply with the aforementioned compliance rules. If compliance is not demonstrated and in case of a violation of the aforementioned compliance rules, the Purchaser shall be entitled to rescind the contract and assert damages. Furthermore, the supplier acknowledges that any Code of Conduct of the Purchaser in force at the time of concluding a contract shall be binding upon it. The Code of Conduct will be sent to the supplier upon request.
- 10.4. If any clause of these Purchasing Conditions is or becomes invalid, this shall not affect the validity of any other contracts or of the remaining clauses. Any invalid or void provision shall be replaced with a valid provision in line with the commercial intention of the original provision. The same shall apply to any loopholes in provisions.

**Current as of January 2023**