

## **General Terms and Conditions Konecny Gerätebau GmbH**

### **1. Scope**

These General Terms and Conditions apply to companies, legal entities under public law and special funds under public law. Our deliveries and services are subject exclusively to the following conditions. Only our general terms and conditions shall apply. Deviations or supplementary conditions made by the partner that are unfavourable for us are not part of the contract, even if we do not specifically object to these.

### **2. Offer and conclusion of contract**

2.1 Our offers are without engagement and non-binding, unless we expressly state in writing that they are binding. Declarations of acceptance and orders placed by the customer shall, if they are recognised as such according to § 145 BGB (German Civil Code), only become binding following our written order confirmation. We will endeavour to confirm acceptance of the Purchaser's orders within 5 working days of receipt of the order.

2.2 Supplementary documents belonging to our offer as within the meaning of 2.1., such as illustrations, drawings, etc., as well as the resulting dimensions and weight details are only approximate unless designated specifically as binding in writing. The same applies to usage instructions. We reserve the right to define common tolerances as deemed reasonable for the Purchaser.

2.3 The ownership and copyright of all documents provided to the Purchaser in connection with the award of the contract, such as drawings, calculations, etc., remains with us. These documents may not be shared with third parties, unless we give our written permission. If we do not confirm the customer's order within the time limit as referred to in point 2.1., these documents are to be returned to us immediately.

2.4 Our employees are not authorised to verbally communicate any arrangements or to give assurances that go beyond the content of the written contract. The Purchaser is solely responsible for the compliance with any legal and official rules and regulations in the use of our deliveries.

### **3. Long-term and call-off contracts, price adjustments**

3.1 Open-ended contracts are terminable within a period of 6 months.

3.2 Where in the case of long-term contracts (contracts with a duration of more than twelve months and open-ended contracts) a substantial change in the salary, material or other costs occurs, each party to the contract shall be entitled to an appropriate adjustment of the price under consideration of these factors. If the delivery quantity is +/- 25% above or below the target quantity, the parties are entitled to adjust the unit price accordingly.

For call-off delivery contracts the Purchaser is to inform us of binding quantities at least 4 months prior to the call-off delivery date, unless otherwise agreed. Changes are to be agreed with our sales department and clarified in the event of an emergency. Possible additional costs due to a delayed call-off or due to short-term changes with respect to time or quantity as caused by the Purchaser, are entirely the Purchaser's responsibility - our calculation is definitive. Unless otherwise agreed, call-off contracts shall start within 12 months of the order.

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

4.1 Unless otherwise specifically agreed in writing, our prices apply ex works exclusive of packaging and are plus value-added tax (sales tax) at the applicable amount. The cost of packaging will be charged separately.

4.2 The purchase price shall be paid within fourteen days of delivery with a 2% discount, or net within 30 days. Interest on arrears will be charged at 9% above the base interest rate of the European Central Bank. Delays are as defined in § 286 BGB (German Civil Code). We reserve the right to demand higher damage sums in the case of payment delays.

### **5. Set-off and retention rights**

The Purchaser has the right to set-off only if his counterclaims have been legally established or are undisputed. The Purchaser shall only exercise a right of retention if his counterclaim is based on the same contractual relationship.

### **6. Delivery time**

6.1 Delivery times are not binding and only approximate. The delivery period commences, if not otherwise stated, from the time the order confirmation was sent by us.

6.2 Delivery within the agreed deadlines is subject to the timely receipt of all documents, required permits and approvals, particularly of plans from the Purchaser, as well as the adherence to the agreed payment terms and other obligations by the Purchaser. If these prerequisites are not fulfilled on time, the deadlines shall be reasonably extended; this shall not apply if we are responsible for the delay.

6.3 Where we are culpable for a delay in delivery the Purchaser may – provided he can prove that he has suffered a loss – claim compensation for each complete week of delay of 0.1%, but no more than 5 % of the net price for that part of the delivery, which due to the delay cannot be put to appropriate use by the Purchaser.

6.4 After the expiry of any deadlines set for us neither the Purchaser's claims for damages due to delay in performance, nor claims for damages in lieu of performance exceeding the values in point 6.3 will be accepted for any cases of a delayed delivery. This shall not apply in cases of intent, gross negligence or injury of life, body or health where liability is mandatory. The Purchaser may only cancel the contract within the framework of the statutory provisions in as far as we are responsible for the delay of the delivery.

6.5 The Purchaser is obliged to, within a reasonable period of time, declare at our request whether he, due to the delivery delay, wishes to withdraw from the contract or further insist on the delivery.

6.6 We are entitled to carry out partial deliveries as well as to reduce or increase the delivery quantity by up to approx. 10%.

### **7. Transfer of risk**

7.1 The delivery is made "ex works" in accordance with Incoterms 2010 unless expressly otherwise agreed with the Purchaser. The risk of accidental loss and accidental deterioration of the goods delivered by us is transferred to the Purchaser at the point of hand-over to or the collection by the carrier unless we have in writing specifically agreed to the

shipping or the assembly of the objects of delivery. This also applies in the case of partial deliveries. Unless otherwise agreed we will determine the type and scope of packaging. The choice of packaging will be in accordance with normal care and attention. One-way packaging will become the property of the Purchaser.

7.2 If the dispatch, delivery, start, assembly or erection, the taking over in the own works or a trial run is delayed due to the Purchaser's own reasons or the Purchaser causes a delay in acceptance for other reasons, then the risk passes to the Purchaser at the time of the acceptance delay.

## 8. Force majeure

Force majeure, labour disputes, strikes, riots, official measures, absence of supplies and other unpredictable, unavoidable and major events free us from our responsibilities for the duration of the disturbance and the extent of the effect. This also applies if these events arise at a time in which we are in default, unless the delay is caused intentionally or by gross negligence. We are obliged to within the scope of reasonability immediately give the necessary information and in good faith adapt our obligations to the changed circumstances.

## 9. Retention of title

9.1 We retain ownership of the delivered goods until the complete payment of all claims arising from the delivery contract. This is also valid for all future deliveries, even if we do not always specifically mention this. We are entitled to reclaim the goods if the Purchaser acts contrary to contract.

9.2 The Purchaser is obliged to treat the goods with care for the duration of non-ownership; in particular he is obliged to insure the goods at his own expense against theft, fire and water damage, up to an adequate replacement value. As long as ownership has not yet been transferred, the Purchaser must notify us without undue delay if the delivered goods are seized or are subject to other interventions by any third parties. If the third party is not in the position to reimburse any court and out-of-court costs for an action according to 771 ZPO (German Code Of Civil Procedure) the Purchaser is liable for the loss suffered by us.

9.3 The Purchaser shall be entitled to the resale of the reserved goods in the ordinary course of business. The Purchaser shall already assign to us the claims of the final invoice amount (including value-added tax or sales tax), as agreed with us, that arise from the resale of the goods to a buyer. This assignment applies regardless of whether the goods have been sold with or without processing. The Purchaser remains entitled to collect the receivable amount even after the assignment has been authorised. Our authority to collect the claim ourselves remains unaffected. We will, however, not collect the claim as long as the Purchaser meets his payment obligations from the received proceeds, does not delay payment and in particular no application for the commencement of insolvency proceedings has been filed or cessation of payments occurs.

9.4 The handling and processing or transformation of the goods by the Purchaser is always carried out in the name of and on our behalf. In this case, the reversionary interest of the Purchaser in the goods purchased will continue in the reconstructed item. If the goods have been processed with other objects not belonging to us, we shall acquire joint title to the new item in proportion to the objective value of our goods to the other processed items at the time of the processing. The same applies in case of mixing. If the mixture is carried out in such a way that the Purchaser's item is to be regarded as the main item, it is deemed to have been agreed that the Purchaser only transfers proportional co-ownership, and stores the resulting item or share of the item on our behalf. To secure our claims against the Purchaser the Purchaser also assigns to us any receivables from third parties that arise for the Purchaser as a result of the connection of the reserved goods with a real estate property; we hereby accept this assignment.

9.5 Upon the Purchaser's request we commit to release the securities we are entitled to, provided their value exceeds the receivables to be secured by more than 20%.

## 10. Warranty

10.1 Warranty claims made by the Purchaser assume that the obligations to inspect the goods upon receipt and submit complaints, if applicable, as stated in § 377 HGB (German Commercial Code) have been complied with. The Purchaser shall inspect the goods without delay, but no later than one week after receipt, for possible defects and inform us if any are found.

10.2 Claims for defects shall become time-barred 12 months after delivery of our goods.

10.3 The condition of the goods is determined exclusively by the technical delivery specifications agreed upon. Where we were to deliver in accordance with the Purchaser's drawings, specifications, samples, etc., the Purchaser is responsible for the suitability of the goods for their intended use. The time of the transfer of risk in accordance with 7. shall be decisive for the contractual condition of the goods.

10.4 Where acceptance of the goods or a first sample inspection were agreed then defects which should have been established during careful acceptance or initial sample inspection are excluded.

10.5 For defects caused by unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, normal wear and tear, incorrect dimensioning (if we did not develop the parts), incorrect or improper treatment such as overheating, running dry, extreme contamination, incorrect lubrication, the warranty shall be void. This also applies to the consequences of incorrect changes or repair work undertaken by the Purchaser or third parties without our consent. The same applies for wear and for defects, which only insignificantly reduce the value or suitability of the goods.

10.6 We shall have the opportunity to determine the notified defect. Upon request a sufficiently large number of rejected goods is to be returned to us for us to review; we will assume the shipping costs, if the notification of defects proves to be valid. If necessary, the Purchaser will actively participate in the investigations, and where necessary make available free of charge special test facilities and capabilities. The contractual partners are to inform each other of the results. The Purchaser shall lose his material defect claims if the Purchaser does not meet these obligations or has without our consent made changes to the rejected goods. In the case of a justified and timely notification of defects we will at our discretion rectify or replace the goods. If we do not meet these obligations or not within a reasonable period of time as set out in the contract, the Purchaser may set in writing a final deadline within which we have to meet our obligations. Once this period has expired the Purchaser may demand a reduction of the purchase price, withdraw from the contract, or carry out or have carried out by a third party the necessary rectifications at our cost and risk. Reimbursement of increased costs caused by the goods having been transported to a different location after our delivery are excluded, unless this is for the intended use of the goods. Separate agreements will be made with us to determine the level and distribution of costs incurred by the Purchaser due to material defects, based on the actual costs and their appropriateness as incurred by the Purchaser, and to check the Purchaser's claims for reimbursement.

10.7 The Purchaser shall sufficiently validate the original unit. Defects are excluded if these could have been found during proper validation.

10.8 If the Purchaser demands that an 8D or similar report be created as part of the claims process, expiry of the time limit set by the Purchaser for the claims process will not imply conclusive acknowledgment of the claim.

10.9 We do not assume any costs for field campaigns, in as far as that these are not required by mandatory statutory provisions (e.g. service actions).

10.10 Where we buy goods from third parties and these are found to be defective, we shall not be responsible for our subcontractor's defects.

## **11. Other Claims, Liability**

11.1 Our liability for damage compensation, irrespective of the legal reasons, in particular from impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and tort is limited.

11.2 We are not liable in the case of simple negligence by our institutions, legal representatives, employees and other vicarious agents, in so far as it does not constitute a violation of major contractual obligations. Essential to the contract are the commitment to a timely delivery, delivery of the goods, their freedom from defects, which more than affect the functionality or suitability in a minor way, as well as consulting, protection and care obligations that enable the Purchaser to use the goods as defined per contract, or that affect the protection of life and limb of the Purchaser's personnel or the protection of the Purchaser's property from significant damage.

11.3 Our liability is limited to damages that we foresaw at the conclusion of contract as a possible consequence of a breach of contract, or that we could have foreseen when exercising due diligence. Indirect losses and consequential damages, which are the result of defects of the goods, are only liable to compensation where such damages can typically be expected when the goods are used as intended.

11.4 In any case, our liability is limited to the amount of the respective cover sum of our product liability insurance, even in the case of an infringement of essential contractual duties.

## **12. Confidentiality**

Each contract party shall use all the documents (such as samples, drawings, models, data, etc.) and the knowledge received through the business relationship solely for the purposes of the joint venture, and treat these with the same care as the contract partner would protect his own documents and knowledge against third parties, if the other party has marked these as confidential or has an obvious interest in their non-disclosure. This obligation does not apply to documents and knowledge that are considered to be general knowledge or that upon receipt were already known to the contract party, without being obliged to maintain confidentiality.

## **13. Tools**

13.1 Unless otherwise agreed, tools that have been manufactured by us or on our behalf remain our property. This even applies if we wholly or partially charge the purchaser for the tools.

13.2 Where it is expressly agreed that the tools are to be the property of the Purchaser, the Purchaser recognises that the samples and manufacturing means (tools, moulds, templates, etc.), as ordered, contain significant development-know-how on our part, and that we are particularly interested in their non-disclosure. For this reason it is agreed that the Purchaser cannot lay claim to the release of the samples and manufacturing means, for whatever legal reasons, at whatever time, even if the Purchaser has fully paid for the tooling costs and/or the supply relationship has terminated.

In the event of our insolvency or inability to deliver, the Purchaser is potentially entitled to the manufacturing means subject to the payment of the remaining tooling costs.

## **14. Project termination**

In the event of a project termination, for which we cannot be held responsible, and as a result of which no series deliveries take place, the Purchaser is liable for all project costs related to the development and manufacture of the product up to the point of time at which we have been notified of the project termination.

## **15. Other**

15.1 The laws of the Federal Republic of Germany shall apply to the exclusion of the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2 The place of performance is our registered office.

15.3 If the Purchaser is a business person, a legal entity under public law or a special fund under public law, the exclusive court of jurisdiction for all disputes arising from the contractual relationship is our registered office. We are also entitled to commence legal proceedings at the Purchaser's head office.

15.4 All agreements between the parties for the purpose of execution of this contract are set down in writing in this contract.

15.5 Should any provision of these terms and conditions or of any further agreements be or become ineffective, the validity of the remaining provisions shall not be affected. The contracting parties are obliged to replace the ineffective provision with a similar one that ensures the economically successful execution of the contract. The same applies to any regulatory gaps.