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## **General Purchasing Conditions** **of Michael Koch GmbH**

### **§ 1 Validity**

- (1) Our terms and conditions apply exclusively. We do not accept deviations or contradicting conditions, unless we have specifically agreed to these in writing. This shall also apply if we have prior knowledge of contradictory conditions of the supplier in respect of deliveries and / or services of the supplier or if we pay for these.
- (2) These conditions also apply to all future deliveries and services until new conditions of purchase apply.
- (3) These general terms and conditions apply only to enterprises as defined by § 310 paragraph 1 BGB.

### **§ 2 Orders**

- (1) Only the contents of our order in text form shall be effective. Any verbal and / or telephonic orders, additions or collateral agreements made prior to, at or after the conclusion of the purchase order will only become effective after our written confirmation. This also applies to changes to this clause.
- (2) Our orders must be confirmed in writing immediately upon receipt. If you should fail to confirm our order immediately in writing, we are entitled to its revocation.

### **§ 3 Shipping and scope of services and delivery date**

- (1) The delivery shall contain all items that are necessary for use according to the agreement, in compliance with the agreed-upon conditions, even if the required items are not listed completely in the respective text of the order.
- (2) Additional prices can be charged for significant expansions of the scope of delivery and/or services that we initiate after the order. Any additional charge must be made immediately and must be agreed upon by us.
- (3) Within the legal scope, we have the right to use software that is included in the scope of product delivery, including your documentation.
- (4) We have the right to use the software referred to in paragraph 3, including the relevant documentation, with the agreed performance features and to the full extent required for utilization of the product in accordance with the agreement. We are permitted to create a backup copy without express agreement.
- (5) The dates and deadlines agreed to in our order are binding. The decisive factor for meeting the delivery date or delivery deadline is receipt of the goods at the receiving site listed in our order. This is also place of fulfilment. The cost of packing, freight and insurance shall be borne by the supplier.
- (6) The supplier must provide the goods at the proper time, taking into consideration customary times for loading and shipment, unless "ex works" is agreed. In the latter case, the supplier is also liable for shipping damage.
- (7) The supplier is obliged to inform us immediately of any imminent or actual delays in delivery, including a statement of reasons and expected duration of the de-lay. This shall not affect the occurrence of a default in delivery.
- (8) If the supplier is in default and no contractual penalty has been agreed to for this, we shall be entitled to demand lump sum compensation to the loss incurred to the amount of 0.5% of the net price per completed

calendar week, but not more than 5% of the net price of the delayed goods or services. We reserve the right to demonstrate that we have suffered a greater loss. The supplier shall be entitled to demonstrate that no loss whatsoever has been incurred, or only a much smaller loss.

- (9) The total acceptance of a delayed delivery or service does not represent our waiver of compensation claims based on the delayed delivery or service; this applies until the full payment owed by us is made.

- (10) The provisions of Section 1502 of the Dodd-Frank Wall Street Reform and Protection Act (Dodd-Frank-Act) on avoiding the use of conflict materials must be complied with. Upon request from Michael Koch GmbH, the corresponding documentation along the supply chain (e.g. by means of a CMRT questionnaire) must be suitably transmitted.

- (11) This shall be without prejudice to further legal rights.

### **§ 4 Performance, transfer of risk**

- (1) Without our written consent, the supplier shall not be entitled to have third parties (e.g. subcontractors) provide the required service for which he is responsible.
- (2) Except in the event of a product made to specifications, the supplier shall bear the procurement risk for its services.
- (3) The supplier shall carry the risk of material damage until the goods are accepted by us or the person authorized by us at the site where the goods are to be supplied. If the terms of the contract require acceptance of the deliveries, the risk in the deliveries passes upon acceptance.

### **§ 5 Prices, terms of payment and invoices**

- (1) The prices are fixed prices and do not include value added tax (VAT). Prices include free shipping to the place of receipt indicated in the order. Unless otherwise agreed, the price includes all of the supplier's services and ancillary services (e.g. assembly, installation) as well as all additional expenses (e.g. proper packaging, transport costs). The supplier shall take back packaging material if requested to do so.
- (2) Payments shall be made within 14 days subject to a 3% discount or within 30 days net of the receipt of the in-voice and delivery of the goods or rendering of the services. For prematurely delivered and invoiced goods, the payment period shall commence only from the agreed date of delivery.
- (3) All payments are made with the proviso that they are subject to assertion of warranty claims and liability claims, if applicable.
- (4) Upon the onset of the default, a reminder from the buyer is necessary under all circumstances.
- (5) The supplier shall only have a right of set-off and/or right of retention in the event of res judicata or undisputed counterclaims.

### **§ 6 Acceptance and warranty claims**

- (1) The acceptance of goods is subject to an examination for possible defects. Any defects of delivery will be reported immediately as soon as they are detected by us in standard course of normal business operations. In this respect, the supplier shall waive any objection to a delayed formal complaint. The obligation to inspect does not apply if acceptance testing has been agreed upon.
- (2) Material and legal defects are subject to the applicable legal provisions, unless subsequently otherwise agreed. Material defects shall be deemed to exist in the event that the properties do not meet

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- health and/or environmental standards.
- (3) Contrary to Article 442 para. 1 page 2 BGB (German Civil Code) we shall even be entitled to unrestricted warranty claims if the defect shall remain unknown to us upon conclusion of contract as a result of gross negligence.
  - (4) If the supplier fails to honor its obligation to provide subsequent improvement within a reasonable period set by us, by either rectifying the defect or supplying a non-defective replacement (replacement delivery) as we see fit, we shall be entitled to rectify the defect and demand compensation from the vendor for the expenses incurred or an appropriate advance payment. If subsequent performance by the vendor fails or is unacceptable to us (e.g. because of extreme urgency, a risk to operational reliability or the imminent risk of unreasonably high losses), no deadline needs to be set; the vendor is to be notified immediately, if possible, in advance.
  - (5) If the law does not provide for a period of limitation exceeding 36 months and no alternative agreement was reached, the period of limitation for warranty claims shall be 36 months from the passing of risk. If an acceptance procedure has been agreed upon, the period of limitation shall commence at the time of acceptance. For any parts serviced or repaired within the period of limitation, this period shall start again on the day the supplier has completed all subsequent performance work on these parts, providing this represents an acknowledgement of the supplier's obligation to rectify defects.
  - (6) If a defect also entitles us to assert non-contractual compensation claims, the standard statutory period of limitation (sections 195 and 199, BGB) shall apply unless other statutory periods of limitation result in a longer period in the case in hand.

### **§ 7 Product and manufacturer's liability, recall and quality assurance**

- (1) The supplier shall indemnify us from all claims based on manufacturer liability insofar as the supplier is responsible for the fault having led to the liability claim. The supplier shall pay all costs and expenses in such cases, including the cost of any possible legal actions or precautionary product recalls. As far as is possible and reasonable, we shall inform the supplier of the content and scope of recall measures and provide the opportunity to comment. This shall be without prejudice to further legal claims.
- (2) The supplier shall insure against all risks associated with product liability that can be insured against, including the risk of a product recall, up to an acceptable amount. The insurance policy must be presented to us upon request.
- (3) The supplier must implement quality assurance measures that reflect the state of the art and present proof of such measures upon request.

### **§ 8 Provisioning of spare parts**

The supplier undertakes to stock spare parts for the goods delivered by him for a period of 5 years with the goods ordered to a total order value less than 5,000-- EUR net per annum, and for a duration of 10 years for orders over 5,000-- EUR net per annum. This stock-holding obligation does not apply if the type of delivery does not result in a recognizable demand for spare parts.

### **§ 9 Force majeure**

If we are prevented by force majeure, especially in case of strike, lockout, through no fault of operational disturbances, riots, official measures and other events for which we cannot be held responsible for the

acceptance of the delivery or performance, we are entitled to terminate the contract in whole or in part, withdraw or move the time of acceptance by the duration of the disturbance, as far as our disturbance is not an inconsiderable duration and the cancellation or postponement of the time of acceptance appears appropriate to protect our interests. Claims against us are not permitted.

### **§ 10 Retention of ownership of materials tools - secrecy**

- (1) As far as we provide the supplier with parts, we retain ownership of these parts. Processing or conversion by the supplier shall be undertaken for us. If the goods are processed or mixed with other goods not belonging to us, we acquire joint ownership of the new object in the proportion that the net invoice value of the goods has the net invoice value of our goods (purchase price plus VAT) with respect to the other processed objects at the time of processing.
- (2) If the goods provided by us are mixed inseparably with other goods not belonging to us, we shall acquire co-ownership of the new goods in proportion of the value of the goods (purchase price plus VAT) with respect to the other mixed goods at the time of mixing. If the mixing takes place in such a manner that the supplier's goods are to be regarded as the main portion of the goods, it shall be agreed that the supplier transfers proportional joint ownership to us; the supplier shall hold the sole ownership or co-ownership for us.
- (3) We reserve the right of ownership to tools; the supplier is obliged to use the tools exclusively for the manufacture of the goods ordered by us. The supplier is obliged to insure the tools belonging to us at replacement value against fire, water and theft. At the same time, the supplier already now assigns all claims for compensation from this insurance to us; we hereby accept such assignment. The supplier is obliged to carry out any re-quired maintenance and inspection work on our tools in time and to bear the expense of all maintenance and repair work. He must notify us immediately of any faults; should he fail, any claims for damages shall re-main unaffected.
- (4) To the extent that our collateral rights under subsection (1) and/or paragraph (2) exceed the purchase price of all unpaid reserved goods by more than 10%, we are obliged at the supplier's request to release the collateral rights of our choice.
- (5) The supplier is obliged to treat all illustrations, drawings, calculations, installation instructions and other documents and information strictly confidential. They may only be disclosed to third parties with our express permission. This confidentiality undertaking remains valid after the completion of this contract. However, it shall expire if and to the extent that the knowledge contained in the illustrations, drawings, calculations and other documents has become generally known or that it was proven to the supplier already at the time of communication in the sense of paragraph 1.(6)The Supplier is committed to use the special knowledge and experience gained on the occasion of the execution of our order exclusively for the execution of our orders and not to make third parties aware of these even after the termination of the contract.

### **§ 11 Export control**

- (1) The supplier shall fulfil all requirements of national and international export, tariff and foreign trade legislation for all goods and services to be supplied and shall obtain the required export licenses, unless we or a third party, and not the supplier, are required

to apply for the export licenses according to applicable export, tariff or foreign trade.

- (2) The supplier shall provide us with all information and data in written form (itemized on the order confirmation, delivery note and invoice) that we need to adhere to the applicable export, tariff and foreign trade legislation for exports and imports as soon as possible and by no later than the delivery date, as well as in the case of further distribution with further export of the goods and services, in particular.
- (3) In the case that for the export control relevant changes are made to the origin or properties of the goods or services or to the applicable export tariff or foreign trade legislation, the supplier shall update the export control and foreign trade data immediately and provide us with confirmation in text form.
- (4) The supplier is obligated to indemnify us from any claims by third parties arising from missing or faulty export control and foreign trade data which was either agreed-upon to be disclosed by the supplier or which was disclosed by the supplier, and to reimburse us for any required expenditures or damages that may arise within the terms of legal provisions.

#### **§ 12 Place of performance, choice of law, place of jurisdiction**

- (1) Place of performance is the receiving office designated by us.
- (2) The exclusive place of jurisdiction for all disputes arising is directly or indirectly from the contractual relationship is Bruchsal, Germany, if our contractual partner is a merchant. We shall also be entitled to bring actions in the place of fulfilment for the delivery commitment or at the contractual partner's company location.
- (3) The law of the Federal Republic of Germany shall apply exclusively, even for deliveries from abroad. The validity of the United Nations Convention on Contracts for the International Sale of Goods (CSIG) is excluded.