

# General Conditions

## 1. GENERAL PROVISIONS

Legal relations between KoCoS (the Supplier) and the Purchaser in connection with supplies or services provided by KoCoS (hereinafter referred to as "Supplies") shall be solely governed by the present AGB. The present AGB shall be considered accepted by the Purchaser upon placement of an order or acceptance of a delivery. Deviating terms and conditions, which KoCoS does not expressly accept in writing, are non-binding, even if KoCoS has not expressly objected to them. To simplify matters, the Purchaser may still print standard formulations referring to the Purchaser's AGB. However, the conditions stated here shall apply.

The general terms and conditions of sale, delivery and payment shall also apply to all future business transactions even if attention is not drawn to this fact again upon conclusion thereof. Additional agreements and amendments or supplements to the contract shall only be applicable if confirmed by KoCoS in writing.

KoCoS herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without our prior consent and shall, upon request, be returned without undue delay to KoCoS if the contract is not awarded to KoCoS. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom KoCoS has rightfully subcontracted Supplies.

The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the Purchaser may make one back-up copy of standard software.

Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.

The term "claim for damages" used in the present AGB also includes claims for indemnification for useless expenditure.

## 2. PRICES, TERMS OF PAYMENT, AND SET-OFF

Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.

If KoCoS is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. for traveling and transport as well as allowances.

Payments shall be made free Supplier's paying office.

The Purchaser may set off only those claims which are undisputed or non-applicable.

## 3. RETENTION OF TITLE

The items pertaining to the Supplies ("Retained Goods") shall remain the property of KoCoS until each and every claim KoCoS has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of KoCoS's security interests exceeds the value of all secured claims by more than 10%, KoCoS shall release a corresponding part of the security interest if so requested by the Purchaser; KoCoS shall be entitled to choose which security interest it wishes to release.

For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

The Purchaser shall inform KoCoS forthwith of any seizure or other act of intervention by third parties.

Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations KoCoS shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by KoCoS; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that KoCoS takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless KoCoS so expressly declares.

## 4. TIME FOR SUPPLIES; DELAY

Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably.

If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e.g. strike or lockout, such time shall be extended accordingly. The same shall apply if KoCoS does not retrieve its own supplies in due time or in due form.

If KoCoS is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5% for every completed week of Delay, but in no case more than a total of 5% of the price of that part of the Supplies which due to the Delay could not be put to the intended use.

Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified above are excluded in all cases of delayed Supplies, even upon expiry of a time set to KoCoS to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Purchaser based on statute is limited to cases where KoCoS is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

At the request of KoCoS, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.

If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5% of the price of the items of the Supplies, but in no case more than a total of 5%. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

## 5. PASSING OF RISK

Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:

- a) if the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the Supplies against the usual risks of transport at the Purchaser's expense;
- b) if the Supplies include assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a fault-free trial run.

The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

## 6. ASSEMBLY AND ERECTION

Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

The Purchaser shall provide at its own expense and in due time:

- a) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
- b) energy and water at the point of use including connections, heating and lighting,
- c) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.

Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption. Access roads and the site of assembly or erection must be level and clear.

If assembly, erection or commissioning is delayed due to circumstances for which KoCoS is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional travelling expenditure of the Supplier or the erection personnel.

The Purchaser shall attest to the hours worked by the erection personnel towards KoCoS at weekly intervals and the Purchaser shall immediately confirm in written form if assembly, erection or commissioning has been completed.

If, after completion, KoCoS demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.

## 7. RECEIVING SUPPLIES

The Purchaser shall not refuse to receive Supplies due to minor defects.

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### 8. DEFECTS AS TO QUALITY

KoCoS shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects",) as follows:

Defective parts or defective services shall be, at the discretion of KoCoS, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.

Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics (Beschaffenheitsgarantie). The legal provisions regarding suspension of the statute of limitations ("Ablaufhemmung", "Hemmung") and recommencement of limitation periods shall be unaffected.

Notifications of Defect by the Purchaser shall be given in written form without undue delay.

In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle KoCoS to demand reimbursement of its expenses by the Purchaser.

KoCoS shall be given the opportunity to repair or to replace the defective good ("Nacherfüllung") within a reasonable period of time. If repair or replacement is unsuccessful, the Purchaser is entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to No. 10 shall be unaffected.

There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.

The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office.

The Purchaser's right of recourse against KoCoS pursuant to Sec. 476 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, the above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against KoCoS pursuant to Sec. 478 Para. 2 BGB.

The Purchaser shall have no claim to damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, restrictions to liberty and/or intentionally or grossly negligent breach of contract on the part of KoCoS. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this Article, based on a Defect, are excluded.

### 9. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT; DEFECTS IN TITLE

Unless otherwise agreed, KoCoS shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by KoCoS and used in conformity with the contract, KoCoS shall be liable to the Purchaser within the time period stipulated in Article 8 as follows:

a) KoCoS shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for KoCoS under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.

b) The liability of KoCoS to pay damages is governed by Article 11.

c) The above obligations of KoCoS shall apply only if the Purchaser (i) immediately notifies KoCoS of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of KoCoS. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by KoCoS or by the Supplies being modified by the Purchaser or being used together with products not provided by KoCoS.

In addition, with respect to claims by the Purchaser pursuant to a) above, Article 8 shall apply mutatis mutandis in the event of an infringement of an IPR. Where other defects in title occur, Article 8 shall apply mutatis mutandis.

Any other claims of the Purchaser against KoCoS or its agents or any such claims exceeding the claims provided for in this Article 9, based on a defect in title, are excluded.

### 10. IMPOSSIBILITY OF PERFORMANCE; ADAPTATION OF CONTRACT

To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless KoCoS is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10% of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to rescind the contract shall be unaffected.

Where unforeseeable events within the meaning of Article 4 substantially change the economic importance or the contents of the Supplies or considerably affect the business of KoCoS, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, KoCoS shall have the right to rescind the contract. If KoCoS intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

### 11. OTHER CLAIMS FOR DAMAGES; STATUTE OF LIMITATIONS

The Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort. The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, loss of life, bodily injury or damage to health, or breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). However, claims for damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for loss of life, bodily injury or damage to health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

To the extent that the Purchaser has a claim for damages, it shall be time-barred upon expiration of the statute of limitations pursuant to Article 8. The same shall apply to the Purchaser's claims in connection with actions undertaken to avoid any damage (e.g. call-back). In the case of claims for damages under the German Product Liability Act, the statutory statute of limitations shall apply.

### 12. VENUE AND APPLICABLE LAW

If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be the KoCoS's place of business. However, KoCoS may also bring an action at the Purchaser's place of business.

Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to be obligated to continue the contract.