

GENERAL TERMS AND CONDITIONS OF PURCHASE

■ § 1 Scope

1. Our General Terms and Conditions of Purchase for Services and Goods (hereafter the "GTC") apply to procurement by the company and contractors listed on the last page. They apply to all contracts concluded for the supply of fungible goods and the performance of services as well as for services for which the service is the focus of the performance and in some cases fungible goods are supplied in addition. These terms and conditions do not apply for construction work or for information technology or development-related work. They also apply for all future business relationships, even if they are not expressly agreed again.
2. Our GTC apply exclusively. Conflicting, divergent or supplemental contractor's General Terms and Conditions shall only apply to the extent that we expressly accept them. Our General Terms and Conditions of Purchase shall also apply even if we accept delivery without qualification with the understanding that the contractor's terms and conditions conflict with or deviate from our General Terms and Conditions of Purchase.
3. All agreements made between us and the contractor for the purpose of executing the contract shall be specified in writing in the order.
4. Our Terms and Conditions of Purchase shall only apply to contractors (Unternehmer) as defined in § 310 Abs. 1 BGB (German Civil Code).

■ § 2 Conclusion of contract

Our orders shall be considered binding only after they have been provided in writing. The contractor must point out obvious errors (e.g., typos or calculation errors) and incomplete information in the order, including order documents, or commission so that the information can be corrected or missing information added; otherwise, the contract shall not be deemed to have been concluded. Our orders may only be accepted by providing order confirmation for a period of ten days from the date of receipt of the written order. Late acceptance shall be deemed to be a new offer and must be accepted by us.

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■ § 3 Payments

1. Unless agreed otherwise between the parties in writing, the price stated by us in the order is binding and includes all delivery charges. The price includes all performance and ancillary performance by the business partner (e.g. assembly, installation), as well as all ancillary costs (e.g. proper packaging, shipping costs for cargo securing, including any transport and liability insurance). The price is net, plus applicable value-added tax.
2. Provided there is no written agreement to the contrary, we shall make payment within 30 days of complete delivery and performance and receipt of a proper and verifiable invoice that includes all legal information pursuant to Section 14 of the Value Added Tax Act (UStG).
3. We are entitled to rights of set-off and retention, as well as to the defense of unperformed contract, to the extent permitted by statute. In particular, we are entitled to withhold due and owed payments where we have claims against the contractor for incomplete or defective performance.
4. Work above and beyond the order documents requires the written consent of us.
5. The contractor shall only have the right of offset and retention for legally binding or undisputed counterclaims. In addition, the contractor shall not be authorized to transfer claims arising from the contractual relationship to third parties without written consent.

■ § 4 Invoices

1. Invoices must be submitted as single copies once delivery has been made. They may not be included with the delivery.
2. If monthly deliveries have been agreed on, then invoices should be issued no later than the third of the following month.
3. All invoices submitted by the contractor must list our order number and our order date. Invoices that do not contain our order number or order date, and that do not comply with the regulations laid out in § 14 UStG, shall not be considered until rectified by the contractor.

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■ § 5 Delivery period / Delays

1. The period for delivery or performance indicated in the order is binding. If the contractor accepts our order, then unless agreed otherwise, the date listed in the order constitutes the start of a delivery period agreed upon in the order (binding execution periods).
2. If the contractor becomes aware that it will be unable to comply with the agreed periods for delivery or performance, it must notify us thereof without delay. The obligation to comply with agreed periods for delivery or performance remains unaffected.
3. In the case of default by the contractor, we are entitled to demand flat-rate damages for default for each full week in the amount of 1%, but not more than 5%, of the order amount. More extensive statutory claims (rescission and compensation of damages in lieu of performance) remain reserved. The contractor has the right to demonstrate that we did not suffer any damages whatsoever from the default or that such damages were substantially lower.
4. In the event of default by the contractor, and after fruitless expiry of a reasonable grace period set by us, we may at the contractor's expense undertake the unrendered performance ourselves or have same undertaken by third parties. If the contractor is in possession of documents that are necessary for this purpose, it must turn over same to us without delay. In addition, after fruitless expiry of a reasonable grace period set by us, we may declare rescission of the contract. In the case of contracts for services, rescission is replaced with a right to terminate without notice.
5. Statutory provisions apply in supplementation of the arrangements set forth in foregoing subsections.
6. Our duty to inspect and accept is not applicable for as long as we are prevented by force majeure from inspecting and accepting the goods. Force majeure is considered to exist, in particular, in the event of natural disasters, unrest, measures by public authorities, strikes, lock-outs, and similar disruptions.

■ § 6 Delivery and shipment

1. Goods shall be shipped to the address stated in the order.
2. We reserve the right to dictate the route and method of shipment, including the means of transport and type of packaging.
3. Delivery notes must be included with each shipment. A delivery note must be issued separately for each order. In the event of partial delivery, the invoice and delivery note must state the amount remaining, and must be marked 'partial delivery'. In the event of the delivery of the balance of an order, they must be marked 'balance of order'.

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■ § 7 Performance of the contract for services

1. The contractor must carry out the order with its own machines, tools, scaffolding, hoists, accommodations and all other equipment that may be necessary. If, in individual cases, we provide the contractor with said items, the contractor shall use them on its own responsibility and shall be liable for damage to the items aside from ordinary wear and tear.
2. Upon our request, the contractor must submit a list of the names of the staff that the latter will employ in our company's work area. The list must be kept up to date.
3. The contract must ensure that all of its employees have the required work permit and it shall be obligated, for all of its employees, to comply with the provisions of the Minimum Wage Act (and any other applicable requirements regarding minimum wage and minimum working conditions), occupational health and safety laws, and all other mandatory employee safety regulations and to make proper payroll tax deductions and social contributions for all employees. At the request of us, the contractor must demonstrate that it has all necessary work permits, that it complies with the law, and that it makes proper payroll tax deductions and social contributions. The contractor shall be obligated to inform us immediately of claims by an employee or a third party as well as proceedings initiated by a government agency or a court for non-compliance with one of the requirements specified in this paragraph. In the event of a breach of the obligations specified in this paragraph, the contractor releases us from all claims and damages that arise as a result of this breach. If there is good cause, particularly a breach of the aforementioned type or a violation of the occupational health and safety regulations that apply at our Company's premises, employees deployed by the contractor may be denied access to our Company's work area; in this case, we reserve the right to cancel the order. In all cases, the contractor must replace staff at its own cost if implementation of the order is continued.
4. Before commencement of the work, the highest ranking employee of the contractor must report to the responsible employee of us in order to discuss performance of the work and must give notice of departure after the work has been performed, provided there is no agreement to the contrary. The responsible employee of us, who shall also be named in the order, shall approve the work after it has been carried out.
5. If the contractor involves third-party companies in the fulfillment of its obligations, it shall require the written consent of us before conclusion of the subcontracts. The contractor must structure the contractual terms and conditions with the subcontractor in a manner that ensures compliance with the contractual agreements between us and the contractor. In the event of a breach, the contractor releases the Company from all claims that arise as a result of this breach.

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6. We shall be authorized to provide the contractor with instructions, provided that doing so is necessary for completing the work properly. However, we shall have the right to issue instructions to the employees of the contractor. The employees of the contractor shall remain subject solely to the instructions provided by the contractor.
7. The contractor must supervise the employees who work for it to the extent necessary.
8. The contractor (e.g. skilled tradesperson or construction companies) may, in agreement with us, dispose of the waste directly arising from its activities in the case of small quantities via our existing waste collection structure. Otherwise, the contractor shall take the waste generated directly by its activities at the latest after completion of the work and hand it over to a certified waste management company for proper disposal.

The contractor may recycle building materials instead of disposing of them. For this purpose, a copy of the approval for the manufacture of recycling products must be submitted to us before the start of work.

If this does not seem feasible or reasonable in an individual case, the contractor shall submit to us a different, justified proposal.

In the case of material recycling as well as all hazardous waste, the recycling certificate or the proof of disposal of the waste disposal company entrusted by the contractor or the proof of the recycling center must be enclosed with the invoice. In the event of an infringement, the contractor shall indemnify us against all claims arising from the infringement.

9. Before commencement of the work, the contractor must visit the site where the work will be performed and ensure that it is suitable in terms of foundations, connections, alignments, etc. If there are subsequently complaints regarding the work performed by the contractor, the contractor may only invoke deficiencies that it found with respect to the preliminary work if it informed us of such deficiencies immediately following its review of the preliminary work.
10. If the contractor determines that our description of the work – a concept, other tasks or requirements – is not objectively feasible or is erroneous or unclear – it must inform us of this in writing immediately and provide technical reasons for its view, where possible before the work is performed.

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■ § 8 Technical execution of the delivery/service and safety requirements

1. The items being delivered and handling of said items at the Company's premises must comply with the applicable VDE and DIN regulations as well as the applicable laws, occupational health and safety requirements and accident prevention rules. In addition, the contractor shall also provide its safeguards as necessitated by the occupational health and safety requirements and accident prevention rules without this requiring a separate order or notification.
2. Upon acceptance of the order, the contractor confirms that it is aware of all employment safety provisions, in particular, the employment safety provisions pursuant to German DGUV Information 215-830 (formerly: BGI 865) and that said provisions shall be met during processing of the order.
3. Products, engines, gears, and other fixed and movable devices that are relevant in terms of energy consumption, as well as technical systems and equipment, must conform in their respective product segment to the current directives and regulations, be GS- and/or VDE-tested, and be furnished with the CE label.
4. If any of the foregoing rules are not complied with, we shall be authorized to reject the delivery/service as non-compliant and to assert claims for damages.
5. If contractors are required to perform work in our individual plant or production areas, we are liable only for willful or grossly negligent breaches of duty. The foregoing does not apply where we are liable for loss of life, physical injury, or damage to health or where we breach a material contractual duty.
6. If working materials are supplied which have not been used by us before, then safety data and fact sheets must be supplied with them.

■ § 9 Industrial property rights

1. The contractor warrants that it will not breach the rights of third parties in connection with its delivery/service.
2. If the contractor delivers technical drawings, software or technical concepts for which there are or may be intellectual property rights, it hereby grants us a non-exclusive, non-transferable right to use these rights with no limit as regards time. The contractor shall be compensated for said rights with the compensation for the delivery/service.

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3. We retain ownership of and copyright to images, drawings, calculations and other of our documents. Such documents may only be used for the contractual service and they must be returned to us after the contract has been completed. The documents must be kept confidential, and such confidentiality must be maintained even after the end of the contract. The obligation to maintain confidentiality shall only lapse if and when the information contained in the documents becomes generally known.
4. Software included in what is supplied, including its documentation, shall be supplied to us along with the right to use it, including its agreed features and characteristics, to the extent necessary for the software to be used in accordance with the contract, or to the extent legally permissible (§§ 69a ff. UrhG).

■ § 10 Retention of title / Models, samples, drawings

1. Title to the delivery/performance vests in us unconditionally and without regard to payment of the price. Excluded in any event are all forms of expanded or extended retention of title, meaning that if the contractor effectively declares retention of title, same applies only until payment of the delivery or performance delivered to us and only to same.
2. If we provide the contractor with parts in connection with orders, we retain title to them. Processing or conversion by the contractor is performed on our behalf. In the case of processing or inter-mixing, we acquire co-title to the new item in the ratio that the value of our item bears to the other processed items at the time of processing.
3. Models, samples, and drawings that were provided by us or prepared on our behalf are or become our property. After the order has been fulfilled, or if the order is not placed, all originals, reproductions, copies, castings, templates, forms, etc. are to be returned to us without delay and at the contractor's own initiative. Transfer to third parties requires our written consent.
4. In the event of infractions by the contractor or one of its agents against the requirements in subsections 1 and 2, we are entitled to demand compensation of damages, unless the contractor is not at fault.

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■ § 11 Product liability / recall

1. The contractor is obliged to indemnify us against third-party claims relating to product liability, if and to the extent that the contractor is responsible for product shortcomings and the damage incurred, according to the principles of product liability law. This does not affect the right to lay further statutory claims.
2. As part of this duty, the contractor is also obliged to reimburse us for any expenditure on or in connection with any product recall we may have to execute. We will inform the contractor, as far as possible and reasonable, of the nature and scope of any recall campaign we have to perform, and provide them with an opportunity to respond to it. Paragraph 1 Clause 2 shall apply accordingly.

■ § 12 REACH (duties to register and inform)

1. According to Article 7 REACH, producers and importers must register a substance in their products with the European Chemicals Agency if:
 - their products contain a quantity of the substance totaling more than one metric ton (in other words, the total quantity in all of the individual products produced or imported) per year and per producer or importer;
 - the substance is intended to be released under normal or reasonably foreseeable usage conditions;
 - the substance manufacturer or importer has not yet registered the substance for this use.
2. Producers and importers of products have to inform the European Chemicals Agency if:
 - a substance of very high concern (SVHC) is contained in those products in a total of more than one metric ton per year and producer or importer;
 - the SVHC in those products has a concentration of more than 0.1 mass percent (w/w).
3. This duty to inform does not apply if the producer or importer of the product can guarantee that people and the environment will not be exposed. In such cases, they shall provide their industrial or commercial customers or retailers with suitable instructions about how to use and dispose of the product.

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■ § 13 Liability for defects / warranty

1. Statutory provisions (Section 377 of the German Commercial Code (HGB)) apply to our commercial duty to inspect and object, with the following proviso: Our duty to inspect is limited to defects that become apparent in connection with the incoming goods control by us under an external evaluation, including the delivery documents, and the quality control by us using a random sample method (e.g. transport damages, wrong delivery, under-delivery). Also controlling is the extent to which an investigation is customary in the ordinary course of business, taking into consideration the circumstances of the specific case. Our duty to object to defects discovered at a later point remains unaffected. In all cases, our objection (notice of defects) is considered to be prompt and timely if it is received by the contractor within 5 business days (10 business day for inspections of raw materials), starting on the date when the goods were received or, in the case of latent defects, the date when the defect was discovered.
2. We are entitled to statutory claims for defects. In every case, we are entitled to demand that the contractor eliminate the defect or deliver a new item, at our discretion. We expressly reserve the right to compensation of damages, particularly the right to compensation of damages in lieu of performance. We are entitled to eliminate the defect ourselves at the contractor's expense if the contractor is in default in providing the cure.
3. In the case of a defective service, particularly assembly, maintenance, and installation work, we are entitled to withhold the payment due for same until the contractor has rectified the service so as to make it capable of inspection and acceptance. Where a defect is to be repaired, we set a deadline for the contractor that is reasonable in view of the order and execution period and the contractor's requirements. If the defect is not repaired by the deadline, we may, at our discretion, procure the service elsewhere or perform it with our own staff and demand reimbursement from the contractor for the corresponding cost and effort.
4. Unless agreed otherwise, or if longer statutory periods apply, the warranty period for claims for defects amounts to 24 months after transfer of risk. The same applies to goods or parts supplied by the contractor in connection with liability for defects (cure).

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■ § 14 Insurance cover and distribution of risk

1. When the order is issued, the contractor must demonstrate that it has an adequate amount of cover for the respective order. The liability insurance must include coverage for personal and property damage as well as for financial losses. A copy of the insurance policy and the insurer's certificate must be presented at our request.
2. The contractor is responsible for insuring its equipment and materials. We will not provide insurance. Liability on our part for loss of or damage to equipment and materials is excluded, provided there is no grossly negligent or intentional conduct on our part or our employees.

■ § 15 Hourly work

1. Additional hourly work may only be carried out at the express of our request. We do not have any right to issue instructions to employees of the contractor for any hourly work.
2. Provided there is no agreement to the contrary, the contractor must, without being asked to do so, submit reports, including copies, to us at appropriate intervals. We must return the report, without the copy, to the contractor immediately, but not later than six (6) business days after receipt of the report. Saturdays are considered to be business days. We may raise objections to the reports themselves or provide them in writing separately. The contractor must submit the signed reports together with each invoice. Reports for which objections have been raised will not be settled. The agreed hourly rates are binding. At minimum, the report must include the following information: Order and invoice dates, name and qualification of the person carrying out the work, the work performed, the start and end dates of the work, the duration of the work, material used.

■ § 16 Confidentiality

We, and the contractor, mutually undertake to treat as confidential the content of any agreements concluded between us and any confidential information and operating secrets which we come to know about as part of fulfilling contracts, and only to use it as part of fulfilling contracts. This includes access to our operating systems and servers. The contractor shall make confidential information and operating secrets available only to those of its employees who need it to fulfill the contracts and whom it has obliged to confidentiality.

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■ § 17 Compliance Guidelines

The Koehler Group has Corporate Compliance Guidelines which regulate things like the way gifts and invitations from contactors are handled. The contractor undertakes not to provide Koehler Group employees with any cash, holidays, or gifts exceeding €40 in gross value. The contractor also undertakes not to send any gifts to employees' private addresses. Any contravention of this clause shall entitle us to terminate the agreement and end the business relationship without notice.

■ § 18 Data privacy

Each Party is entitled to store, process, and use the personal data received from the other Party for the purpose of contractual performance, paying due regard to the provisions of the German Federal Data Protection Act and the General Data Protection Regulation (GDPR). In particular, this means

- that the person authorized to process personal data is bound by a nondisclosure obligation or is subject to an appropriate statutory duty of secrecy;
- that personal data pertaining to our Company may not be processed outside the scope of the GDPR without the permission of us;
- that personal data shall be appropriately safeguarded by means of technical and organizational measures pursuant to Article 32 of the GDPR;
- our Company is indemnified from claims made by third parties and data subjects arising from a culpable breach of provisions of the GDPR on the part of the contractor, with the burden of proof incumbent on the contractor in respect of demonstrating the necessary care pursuant to Article 5 (2) of the GDPR;
- that personal data pertaining to the contractor may only be transmitted to our Company in accordance with the provisions of the GDPR (in particular, transmission due to legal authorization or consent or for the purpose of meeting transparency obligations and the rights of data subjects).

In the event that the performance of the contract requires further processing of personal data, the Parties undertake to conclude an agreement on commissioned data processing.

■ § 19 Transferring rights and obligations

Rights and obligations arising from agreements concluded between the contractor and us may only be transferred partially or wholly with our express written permission.

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■ § 20 Final provisions / place of jurisdiction / applicable law

1. If a place of performance for performances/deliveries is not expressly agreed upon, then the place of performance is the registered office of the ordering company, provided that the contractor is a merchant or a legal entity governed by public law. The place of jurisdiction is the registered office of our ordering company. However, we are also entitled to bring suit against the contractor at its general place of jurisdiction.
2. No verbal agreements have been made. If such agreements were made before the integration of these General Terms and Conditions of Purchase for Services, they shall become null and void upon integration of these General Terms and Conditions of Purchase for Services.
3. In addition to the relevant agreement pursuant to Section 3, the relevant laws of the Federal Republic of Germany pertaining to legal relationships between domestic parties shall apply exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
4. If any of the aforementioned clauses shall be wholly or partly invalid, this shall not affect the applicability of the rest of the General Terms and Conditions of Purchase for Services. These Terms and Conditions of Purchase for Services shall apply in the version valid at the time an agreement is concluded, which can be viewed at www.beaverpaper.com.

Beaver Paper GmbH, Willstätt

Our General Terms of Purchase have been translated into English. In the case of different interpretations between the two language versions, the German version shall take precedence.

(Status: July 2022, Rev. 3)