

Contract / Order

General Terms and Conditions of Purchase

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Preamble

These General Conditions of Purchase shall apply exclusively for the whole KOCH Solutions Group, namely KOCH Solutions GmbH, HRB 104899, KOCH Solutions Service GmbH, HRB 109601 and KOCH Solutions Projects GmbH, HRB 109600.

1. General Scope

- 1.1. These General Conditions of Purchase shall apply exclusively to all orders, including those placed in the future. We do not recognize any terms and conditions of the Contractor which conflict with or deviate from our Conditions of Purchase unless we have explicitly agreed in writing to their validity. Our Conditions of Purchase shall also apply exclusively even in cases where we accept the Contractor's services without reservations and/or pay for them despite knowledge of any contradictory conditions of the Contractor and/or those which deviate from our Conditions of Purchase.
- 1.2. Any agreements concluded between us and the Contractor for the purpose of executing the order must be set out in writing in the Purchase Order.
- 1.3. In accordance with Section 310, Para. 1 of the German Civil Code (BGB), our Conditions of Purchase only apply to businesses.
- 1.4. The Client expects its Suppliers and Contractors to apply and adhere to these guidelines and procedures which ensure compliance with applicable laws and regulations and support generally accepted sustainable business practices, including, but not limited to:
 - a. respect for fundamental human rights as expressed in the UN Declaration of Human Rights, including the desistance of using forced labour and the respect for ethnic, cultural, religious and political diversity;
 - b. compliance with the UN Convention on the Rights of the Child with regard to all use of child labour;
 - c. respect for the fundamental rights of workers, as declared by the International Labour Organisation (ILO), including the freedom of employees to organise themselves and negotiate collective working conditions;
 - d. avoidance of conflicts of interest and the exclusion of any practice of corruption in their business practices, including bribery, facilitation payments, and extortion, as well as the participation in any form of money laundering;
 - e. compliance with regulations against restraints of competition and regulations on export control;
 - f. respect for the intellectual property rights of each party in all business activities.
- 1.5. In the event the Contractor seriously infringes applicable laws or infringes the regulations listed in Sections 1.4.1 - 1.4.6, the Client shall reserve the right to withdraw from any existing contracts or to terminate these without notice.

2. Offers, Purchase Orders, Order Confirmations

- 2.1. As sole or co-ordering party or as a representative for third parties, offers shall be made free of charge for us.
- 2.2. Only written orders shall be binding. Services or deliveries performed without a written Purchase Order will not be accepted.
- 2.3. Unless otherwise stipulated in the Purchase Order, Purchase Orders must be confirmed in writing by the Contractor within 14 days of receipt.

3. Prices, Terms of Payment

- 3.1. Until complete performance of the contract, the prices specified in our Purchase Order are fixed prices unless stated otherwise. They apply to all deliveries/services which belong to the Contractor's scope of delivery/services, even if these are not expressly mentioned in our technical documents but are however recognisable to the Contractor.
- 3.2. Invoices must include the information required by our Purchase Order, such as the Purchase Order number or Change Order number and any tax requirements as well as Section 14 of the German Value Added Tax Act. Any incorrect invoice shall not be accepted and in particular shall not allow the payment term to commence. The payment term shall commence upon complete performance of the contractually agreed scope of services and receipt of a correct invoice.
- 3.3. Payments do not constitute recognition of the Contractor's contractual conformity concerning deliveries/services in the sense of acceptance.
- 3.4. We are entitled to set-off and retention rights to the extent permitted by law.

4. Delivery Time, Default, Withdrawal

- 4.1. The delivery time stated in the Purchase Order is binding.
- 4.2. Should any circumstances arise, of which the Contractor becomes aware, which may result in the Contractor being unable to adhere to the stipulated delivery time, the Contractor is obliged to inform us without delay in writing.
- 4.3. We shall be entitled to statutory claims if delivery is delayed. In the event of delay in delivery, we shall also be entitled to demand liquidated damages in the amount of 0.2% of the Purchase Order's total value per day, limited to max. 5% of the Purchase Order's total value unless otherwise agreed in the Purchase Order. The Contractor is entitled to furnish us with proof that no damage or less damage has arisen due to the delay. Furthermore, after the unsuccessful expiry of a reasonable period of time, we are entitled to claim damages in lieu of performance. In such case, the Contractor is entitled to furnish us with proof that he was not responsible for the breach of duty.
- 4.4. If the deliveries/services are not performed on time, we are entitled to withdraw from the agreement after setting a reasonable deadline.
- 4.5. The unconditional acceptance of the delayed delivery does not constitute a waiver of compensation claims.

5. Delivery, Packaging, Transfer of Risk, Transfer of Ownership

- 5.1. Unless otherwise agreed in writing, delivery is made free of charge to the address of destination. Partial deliveries are only permitted after written agreement. For the transfer of risk, the respectively agreed Incoterm in the currently valid version applies for deliveries which do not include or require assembly or commissioning; otherwise, the transfer of risk is made upon acceptance of the entire plant. Inspections previously performed by us or the end customer do not constitute acceptance in the legal sense.

- 5.2. At our discretion, packaging shall be performed by the Contractor or by a commissioned third party. Packaging shall be performed at the Contractor's workshop unless otherwise agreed in the Purchase Order.
- 5.3. Our head office or the receiving point designated by us is the place of fulfilment of the delivery and services.
- 5.4. The Contractor shall ensure compliance with all laws and regulations associated with carriage, including carriage of dangerous goods, particularly concerning labelling, packaging and transport.
- 5.5. The readiness for dispatch of deliveries shall be notified to us by sending a shipment notification in good time, but at the latest 14 days before the planned dispatch; an invoice is not deemed a shipment notification. Furthermore, the dispatch shall be made according to our instructions.
- 5.6. Ownership of the ordered goods is transferred to us at the latest upon delivery. We do not recognise any extended or prolonged retention of title by the Supplier. The Contractor shall deliver the goods free of third-party rights.
- 5.7. The Contractor is obliged to inform us in good time of any export restrictions for his deliveries and services. He shall inform us in good time of any information and data that we need to comply with regarding applicable export, customs and foreign trade laws for import and export and, in the event of resale, for re-export of the goods and services.

6. Duties of the Contractor, Defects Investigation, Liability for Defects

- 6.1. The Contractor is obliged to inform us in good time of any export restrictions for his deliveries and services. He shall inform us in good time of any information and data that we need to comply with regarding applicable export, customs and foreign trade laws for import and export and, in the event of resale, for re-export of the goods and services
- 6.2. All deliveries/services rendered by the Contractor shall correspond with the latest state-of-the-art technology, legal provisions, regulations and guidelines of any authorities, government safety organisations and professional associations as well as the relevant norms and standards which apply in the Federal Republic of Germany, the country of origin and the country for which the deliveries/services are intended. In particular, this applies to the regulations, provisions and guidelines concerning environmental protection and workplace safety. The Contractor shall enquire about the country of destination.
- 6.3. The Contractor is obliged to establish and maintain a documented quality management system, which is suitable in type and scope according to the latest state-of-the-art. He shall keep records, in particular of its quality inspections, and make these available to the Client upon request. The Contractor hereby consents to quality audits to assess the effectiveness of his quality assurance system by the Client or one of his representatives.
- 6.4. We are obliged to check deliveries/services within a reasonable period of time for any deviations in identity and quantity as well as for any transport damage and, if necessary, to make a complaint. The Contractor is aware that special features may exist in the plant engineering and construction business and that, in certain circumstances, a necessary complaint can only be made after installation and commissioning of the deliveries. In the case of defects that are not obvious, the

Contractor waives the objection of delayed notification of defects (Sections 377, 381 Para. 2, of the German Commercial Code (HGB)).

- 6.5. Defects, which also include the failure to achieve guaranteed data and the absence of the agreed quality, in the deliveries/services discovered during the period of liability for defects shall be remedied upon request at our discretion by the Contractor via repair or replacement delivery without delay and free of charge, including all supplementary expenses. In particular, these supplementary expenses include any costs incurred during troubleshooting, removal of the defective part and installation of the spare part as well as transport costs and the costs of import and export of the defective or repaired or replaced delivery item. If a rectification/replacement delivery is not possible or unsuccessful or if it is delayed or refused beyond a reasonable period set by us in writing, we are entitled to the statutory rights of withdrawal from the agreement or reduction. Claims for damages remain unaffected. This also applies to claims for damages in lieu of performance.
- 6.6. Should the Contractor not fulfil his obligation to rectify defects within the period set by us without justifiably refusing subsequent performance, we may take the necessary measures or have them taken at his expense and risk. If the subsequent performance has failed or is unreasonable for the Contractor, no deadline needs to be set.
- 6.7. Provided legal regulations do not require a longer period of limitation, the period of limitation for claims is 36 months unless otherwise agreed in the Purchase Order. In accordance with Section 5.1, the period of limitation begins on the day of delivery or, in case of an agreed acceptance, on the day of acceptance by us or the end customer. These regulations apply accordingly for replacement deliveries.
- 6.8. If the Contractor's deliveries/services have defects or if they are in breach of contractual duties of care or due diligence, or of providing information or of other contractual secondary obligations or if contractually agreed deadlines are not met (contractual infringement), the Contractor is liable towards us for any damage resulting thereof. Statutory provisions remain otherwise unaffected.

7. Product Liability, Indemnity, Liability Insurance Protection

- 7.1. Insofar as claims are asserted against us by third parties due to product damage and insofar as the Contractor is responsible for such product damage, the Contractor shall be obliged to indemnify us against claims for damages by third parties at our first request if the cause lies within his sphere of control and organisation and he is liable in the external relationship.
- 7.2. The Contractor is obliged to maintain product liability insurance with a coverage sum of €10,000,000 for personal injury and material damage. Further claims for damages shall remain unaffected by this.

8. Industrial Property Rights and Licences

- 8.1. The Contractor shall transfer ownership to us of all technical documents included in the scope of delivery and grant us a non-exclusive right of use to all industrial property rights which are required by us and the end customer to use the deliveries and services. In order to maintain, operate and repair the deliveries and services, we will be entitled to transfer this right of use to third parties.

- 8.2. If claims are asserted against us by a third party with regard to the Contractor's deliveries and services due to infringement of industrial property rights, the Contractor shall be obliged to indemnify us against such claims upon our first written request; without the Contractor's consent, we shall not be entitled to make any agreements with the third party, in particular to conclude a settlement. This shall not apply if the infringement of property rights is based on strict compliance with the specification by the Contractor or our design.
- 8.3. The Contractor's obligation to indemnification shall relate to all expenses inevitably incurred by us as a result of or in connection with claims asserted by a third party.

9. Health and Safety

- 9.1. To protect all persons and property against injury or damage, the Contractor is responsible for the safe execution of the Purchase Order in accordance with all local regulations and shall take all necessary safety measures, including safe working conditions and training in safe working methods, appropriate personal safety measures and other precautions.
- 9.2. The Contractor must ensure that his employees have access to normal health care facilities in the country and that all statutory regulations concerning social insurance for employees are observed.

10. Confidentiality

- 10.1. The rights to all documents (illustrations, drawings, calculations, etc.) made available to the Contractor or his vicarious agents or produced by him using our know-how shall remain our property or be transferred to us. These documents may only be used for purposes approved by us and may not be made accessible or made available to third parties without our prior written consent. Upon termination of the activity, the Contractor shall return complete and comprehensive documentation to us, including any copies made thereof.
- 10.2. Additionally, the Contractor shall maintain confidentiality towards third parties regarding all operational processes, equipment, installations, etc. at our premises and those of our associated companies (also in future) and our customers which become known to him in connection with his activities for us. The Contractor shall impose corresponding obligations on his vicarious agents.
- 10.3. The obligation to maintain secrecy in accordance with Sections 10.1 and 10.2 shall also apply after completion of the Purchase Order.

11. Changes to Deliveries and Services

- 11.1. We are entitled to demand changes, extensions, reductions or other modifications to the Contractor's scope of delivery and services. Within seven (7) days after receipt of a corresponding request, the Contractor shall inform us in writing of any additional or reduced costs as well as of any extension or reduction of the time schedule for the respective order. The Contractor shall not make any changes to the delivery and services before the change has been agreed upon in writing and a corresponding adjustment to the costs and/or schedule has been determined.
- 11.2. The Contractor shall notify the Client in writing within seven (7) days of receipt of an instruction or decision by the Client which, in the Contractor's opinion, represents a change in the deliveries and services and must notify the Client of any changes in costs or schedules which, in the Contractor's opinion, result therefrom. The Client shall confirm or reject the change within 14 working days of receipt of the Contractor's notification. The last sentence of 11.1 shall apply accordingly.

12. Assignment, Offsetting, Free-Issue Parts, Sub-Suppliers, Contractor's Insolvency

- 12.1. The Contractor is not entitled to assign claims arising from the Purchase Order to third parties without our written consent. Insofar as the Contractor has retained the title to the goods delivered by him, we recognise the simple retention of title. Any additional securities of the Supplier are excluded.
- 12.2. The Contractor may only offset any undisputed or legally established claims.
- 12.3. In cases where we provide parts to the Contractor, we reserve the right of ownership of these parts. Any processing or alteration work shall be carried out by the Contractor on our behalf. If our retained goods are processed with other items that are not owned by us, we shall acquire joint ownership of the new item in the same ratio of our item's value to the other processed items at the time of processing.
- 12.4. The Contractor is not entitled to transfer the execution of the respective Purchase Order in whole or in part to third parties without the Client's prior written consent.
- 12.5. In the event that an application is made to open insolvency proceedings against the Contractor's assets,
 - a. the Contractor shall hereby assign to us his claims for delivery against his subcontractors in connection with the order,
 - b. we reserve the right to cancel the Purchase Order.

13. Termination

- 13.1. We shall be entitled at all times to cancel the Purchase Order either in part or in full. In such case, the Contractor shall be entitled to full remuneration for any deliveries/services which have already been rendered as well as any demonstrably unavoidable direct costs resulting from the Purchase Order. The claim to a pro rata profit is limited to a maximum of 5% of the remaining order value.
- 13.2. In the case of termination for good cause, the Contractor shall be entitled to full remuneration for any deliveries/services which have already been rendered as well as any demonstrably unavoidable direct costs resulting from the Purchase Order. An important reason shall be if we no longer have any interest in the contract's performance for compelling legal, economic or operational reasons and/or if a significant deterioration in the Contractor's financial circumstances occurs. The Contractor shall only be entitled to remuneration for deliveries/services which are commercially usable for us.

14. Place of Jurisdiction, Applicable Law, Partial Invalidity, Liability

- 14.1. If the Contractor is a businessman, our head office shall be our place of jurisdiction; we shall, however, also be entitled to sue the Contractor at his place of residence.
- 14.2. The statutory provisions of the Federal Republic of Germany shall apply exclusively to the exclusion of international private law. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.
- 14.3. Should any deviations to these conditions or parts thereof arise due to any translations, only the German version shall be legally binding.

15. Minimum Wage Legislation

- 15.1. The Contractor shall adhere to the German Minimum Wage Act (Mindestlohngesetz, MiLoG), the Posted Workers Act (Arbeitnehmerentsendegesetz, AEntG) and the Employee Leasing Act (Arbeitnehmerüberlassungsgesetz, AÜG). He undertakes to pay his employees at least the minimum wage as prescribed by these laws.
- 15.2. The Customer shall therefore be entitled at any time to demand up-to-date evidence (hourly reports, anonymous pay slips and employee lists) from the Contractor, the subcontractors commissioned by him and the lenders of temporary employees commissioned by the Contractor or his subcontractors in regards to the execution of the contract and hired in accordance with the Employee Leasing Act (AÜG).
- 15.3. In regards to the contractual relationship with the Client, the Contractor undertakes to contractually oblige any subcontractors commissioned by him, their subcontractors and the lenders of temporary employees hired by the Contractor or his subcontractors within the meaning of the Employee Leasing Act (AÜG) to pay their employees the legally prescribed minimum wage and to provide the Client with the aforementioned information and evidence on request.
- 15.4. Concerning any violations of the Minimum Wage Act (MiLoG), the Posted Workers Act (AEntG) and the Employee Leasing Act (AÜG), the Contractor undertakes to indemnify the Client against all claims by third parties; arising in particular from his obligation to perform in the event of claims by employees of the contractor, by employees of subcontractors or by leased temporary employees deployed in the framework of the contractual relationship, as well as his liability for a fine pursuant to Section 21 of the Minimum Wage Act. The indemnification also includes court and legal costs.
- 15.5. If the Contractor violates the obligation to pay the minimum wage or does not comply with the obligation to provide documentation within a reasonable period set by the Client, the Contractor shall be entitled to terminate the contract without notice. Unless the Contractor himself terminates the contractual relationship without notice with the subcontractors concerned, the same shall apply in the event that the Contractor's subcontractors or the employee lenders commissioned by the Contractor or its subcontractors to execute the contract violate the obligation to pay the minimum wage or to present the necessary documentation.