

# KÖNIG METALL

## General Terms & Conditions of Delivery

As of: February 2019

### § 1 Scope of application, Form

(1) These General Terms and Conditions of Delivery ("GCD") shall apply to all our business relations with our customers ("Customer"). The General Terms and Conditions shall only apply if the customer is an entrepreneur (§14 BGB), a legal entity under public law or a special fund under public law.

(2) The GCD apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GCD in the version valid at the time of the customer's order or, in any case, in the version last communicated to him in text form, shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) Our General Terms and Conditions shall apply exclusively. Deviating, opposing or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the customer unconditionally in full knowledge of the customer's general terms and conditions.

(4) Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GCD. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation.

(5) Legally relevant declarations and notifications of the customer with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in the event of doubt as to the legitimacy of the declarant, shall remain unaffected.

(6) References to the validity of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these General Terms and Conditions.

### § 2 Formation of Contract

(1) Our offers are subject to confirmation and non-binding. This shall also apply if we have provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership rights and copyrights.

(2) The order of the goods by the customer shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 4 weeks of its receipt by us.

(3) Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.

### § 3 Delivery Period and Delay in Delivery

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period shall be approx. 4 weeks from the conclusion of the contract.

(2) Our obligation to deliver is subject to correct and punctual delivery by our suppliers.

(3) If we are unable to comply with binding delivery periods for reasons for which we are not responsible (non-availability of performance), we shall inform the customer thereof without delay and at the same time inform the customer of the expected new delivery period. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall reimburse any consideration already rendered by the customer without delay. In particular, the non-availability of the service in this sense shall be deemed to be the non-timely self-delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required.

### § 4 Delivery, Passing of Risk, Acceptance, Default of Acceptance

(1) Delivery shall be made "Ex Works" (Incoterms 2010), where the place of performance for the delivery and any subsequent performance shall also be. At the Customer's request and expense, the goods shall be shipped to another destination (sale by delivery). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.

(2) If the customer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall charge a flat-rate compensation of 0.5% per calendar week up to a maximum of 10% of the delivery value per calendar day, beginning with the delivery period or - in the absence of a delivery period - with the notification that the goods are ready for dispatch.

The proof of a higher damage and our legal claims (in particular compensation for additional expenses, appropriate

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compensation, termination) remain unaffected; however, the lump sum is to be set off against further monetary claims. The customer shall be entitled to prove that we have incurred no damage at all or only considerably less damage than the above flat rate.

## § 5 Prices and Terms of Payment

(1) Unless otherwise agreed, our prices valid at the time of conclusion of the contract shall apply, ex warehouse, plus statutory turnover tax.

(2) In the case of sale by dispatch (§ 4 paragraph 1), the customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the customer. Any customs duties, fees, taxes and other public charges shall be borne by the customer.

(3) The purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation. In the case of cash payment within 14 days of the invoice date, we grant a discount of 2%. Arrears and bills of exchange exclude a discount deduction. The receipt on the bank account specified in the respective invoice is decisive for the timely payment.

(4) The customer shall be in default upon expiry of the aforementioned payment period. The purchase price shall bear interest at the statutory default interest rate applicable from time to time during the period of default. We reserve the right to assert further claims for damages caused by default. Our claim against merchants for commercial interest on arrears (§ 353 HGB) remains unaffected.

(5) The customer shall only be entitled to set-off or retention rights to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the counter rights of the customer shall remain unaffected, in particular in accordance with § 7 para. 6 sentence 2 of these General Terms and Conditions.

## § 6 Retention of Title

(1) Until full payment of all our current and future claims from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the sold goods.

(2) The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security until the secured claims have been paid in full. The customer shall notify us immediately in writing if an application is made to open insolvency proceedings or if the goods belonging to us are seized by third parties (e.g. seizures).

(3) If the customer acts in breach of contract, in particular if the purchase price due is not paid, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand the return of the goods on the

basis of retention of title. The demand for surrender does not at the same time include the declaration of withdrawal from the contract; we are rather entitled only to demand surrender of the goods and to reserve the right to withdraw from the contract. If the customer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the customer a reasonable deadline for payment beforehand or if such setting of a deadline is superfluous according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If the ownership rights of third parties remain in force in the case of processing, mixing or combining with goods of third parties, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The customer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product, in whole or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the customer stated in para. 2 shall also apply with regard to the assigned claims.

(c) The customer shall remain authorised alongside us to collect the claim. We undertake not to collect the claim as long as the customer meets his payment obligations towards us, there is no defect in his ability to pay and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment. In this case we shall also be entitled to revoke the customer's authority to further sell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the customer's request.

## § 7 Remedies in Case of Defects

(1) The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the statutory special provisions shall remain unaffected upon final delivery of the unprocessed goods to a consumer, even if the consumer has further processed them (supplier recourse pursuant to §§

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478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the customer or another entrepreneur, e.g. by installation in another product.

(2) The basis of our liability for defects is above all the agreement reached on the condition of the goods. All product descriptions and manufacturer information which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be regarded as an agreement on the quality of the goods.

(3) Insofar as the quality has not been agreed, it shall be assessed according to the statutory provisions whether a defect exists or not (§ 434 Para. 1 S. 2 and 3 BGB). However, we assume no liability for public statements of the manufacturer or other third parties (e.g. advertising statements) which the customer has not pointed out to us as decisive for his purchase.

(4) The customer's claims based on defects require that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified thereof in writing without delay. In any case, obvious defects must be reported in writing within one week of delivery and defects not recognisable during inspection within the same period of time from discovery. If the customer fails to properly inspect the goods and/or give notice of the defect, our liability for the defect not reported or not reported in a timely manner or not properly shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may first choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(6) We shall be entitled to make the supplementary performance owed dependent on the customer paying the purchase price due. However, the customer is entitled to retain a reasonable part of the purchase price in proportion to the defect.

(7) The customer shall give us the time and opportunity required for the owed subsequent performance, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the customer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall include neither the removal of the defective item nor its reinstallation if we were originally not obliged to install it.

(8) We shall bear or reimburse the expenses required for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs as well as any

dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand reimbursement from the customer for the costs incurred as a result of the unjustified demand to remedy the defect (in particular testing and transport costs), unless the customer was unable to recognize the defect.

(9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the customer has the right to remedy the defect himself and to demand compensation from us for the objectively necessary expenses. We must be informed immediately, if possible in advance, of any such self-action. The right of self-remedy does not exist if we would be entitled to refuse a corresponding supplementary performance in accordance with the statutory provisions.

(10) If the supplementary performance has failed or a reasonable period to be set by the customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

(11) Claims by the customer for damages or reimbursement of futile expenses shall only exist in accordance with § 8 even in the case of defects and are otherwise excluded. § 7 Rights in case of defects

## § 8 Liability

(1) Insofar as nothing to the contrary results from these GCD including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages - for whatever legal reason - within the scope of liability for culpa in contrahendo in cases of intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in our own affairs), for

a) for damages resulting from injury to life, body or health,

b) for damages arising from the not inconsiderable breach of an essential contractual obligation (obligation the fulfilment of which is essential for the proper execution of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the

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quality of the goods and for claims of the customer under the Product Liability Act.

(4) Due to a breach of duty which does not consist in a defect, the customer may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of the customer (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

## § 9 Statute of Limitations

(1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) The aforementioned limitation periods of the sales law also apply to contractual and non-contractual damage claims of the customer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the customer pursuant to § 8 para. 2 sentence 1 and sentence 2(a) as well as pursuant to the Product Liability Act shall, however, become statute-barred exclusively according to the statutory limitation periods.

## § 10 Privacy Notice

(1) The data controller pursuant to § 3 para. 7 of the Federal Data Protection Act is KÖNIG METALL GmbH & Co. KG, represented by KÖNIG METALL Verwaltungs-GmbH, Management: Nina Zwiebelhofer, Stefan Hoos, Hans-Jörg Leuze, Thomas Stöhr, Josef-König-Straße 1, 76571 Gaggenau, Phone: + 49 (0) 7225 / 6803-0, Fax: + 49 , (0) 7225 / 6803-780, E-Mail: [daten-schutz@koenigmetall.com](mailto:daten-schutz@koenigmetall.com).

(2) Personal data is collected, stored, changed, transmitted or used by us to the extent necessary to process the contracts with the customer (legal basis is Art. 6 Para. 1 S. 1 lit. f DS-GVO). The data arising in this context will be deleted after storage is no longer required, or processing will be restricted if there are legal storage obligations. Within the framework of the fulfilment and processing of the contractual relationship, the service providers used (e.g. shipping companies, carriers, logisticians, credit institutes, payment service providers, factoring companies) receive the data insofar as this is necessary for the fulfilment and processing of the contractual relationship and for the processing of payments. The data passed on may only be used by the service providers for the performance of their respective tasks.

(5) With regard to the processing of personal data, the affected parties have the following rights:

- Right to information,
- Right to rectification or deletion,
- Right to limit the processing,

- Right to object to the processing,
- Right to data transferability.

In addition, there is the right to complain to a data protection supervisory authority about the processing of personal data.

Data Protection Officer of KÖNIG METALL GmbH & Co. KG:  
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## § 11 Choice of Law and Place of Jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these General Terms and Conditions and the contractual relationship between us and the customer.

(2) If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business in Gaggenau. The same applies if the customer is an entrepreneur within the meaning of §14 BGB (German Civil Code). In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the customer. Prior statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

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